

RECEIVED

Apr 18 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, Acting Circuit Court Judge

Appellate Case No. 2024-000501  
Circuit Court Case Nos. 2022-CP-40-05543, 2023-CP-40-03108

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, In., Great Barrier  
Insulation Co., Grinnell LLC, Heat & Frost Insulation Company, Inc., Henry  
Pratt Company, LLC, Howden North America Inc., ITT LCC, 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 US, LLC, Raytheon Technologies Corporation,  
Redco Corporation, Riley Power In., 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,

and

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

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, In., Great Barrier Insulation Co., Grinnell LLC, Henry Pratt Company, LLC, Howden North America Inc., ITT LCC, 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, Westrock Company, The William Powell Company, Zurn Industries, LLC.....Defendants,

of which

Michael David Scott, Sandra Strickland Link, Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley Potter, deceased, and Asbestos Corporation Limited, by and through its court-appointed Receiver, Peter D. Protopapas, are the.....Respondents,

and

Certain Underwriters at Lloyd's, London, Certain London Market Insurance Companies, and Resolute Management Inc. are the.....Appellants.

---

**INITIAL BRIEF OF NONPARTY APPELLANTS  
CERTAIN UNDERWRITERS AT LLOYD'S, LONDON,  
CERTAIN LONDON MARKET INSURANCE COMPANIES,  
AND RESOLUTE MANAGEMENT INC.**

---

Stephanie G. Flynn  
SC Bar #16653  
Fox Rothschild LLP  
2 W. Washington Street, Suite 1100  
Greenville, SC 29601  
(864) 751-7607  
sgflynn@foxrothschild.com

*Attorney for Resolute Management Inc.*

Theodore L. Manos  
SC Bar #8660  
Robertson Hollingsworth Manos & Rahn, LLC  
550 King Street, Suite 300  
Charleston, SC 29403  
(843) 723-6470  
tlm@roblaw.net

*Attorney for Certain Underwriters at Lloyd's,  
London and Certain London Market Insurance  
Companies*

## TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE ISSUES ON APPEAL .....	1
INTRODUCTION .....	2
STATEMENT OF THE CASE .....	3
A.    ACL’s Receivership.....	3
B.    Proceedings Regarding CLMI and Resolute.....	4
STANDARD OF REVIEW .....	9
ARGUMENTS .....	9
I.    Plaintiffs’ Settlements Abate the Alleged Contempt and Require Vacatur of the Sanctions Order. ....	10
II.   The Receivership Order Is Unlawful. ....	12
A.    The Receivership Order Violates South Carolina Law.....	12
B.    The Receivership Order Violates the U.S. Constitution. ....	19
C.    The Invalidity of the Receivership Means That CLMI and Resolute Cannot Be Sanctioned for Failure to Cooperate with the Receiver. ....	23
III.  The Sanctions Order Is Unlawful. ....	24
A.    The Sanctions Order Does Not Identify a Clear and Unambiguous Prior Order That CLMI and Resolute Violated. ....	25
B.    The Sanctions Order Does Not Identify a Clear and Unambiguous Means of Purging Contempt. ....	27
C.    The Trial Court Could Not Sanction CLMI and Resolute for Conduct Related to the Receivership Because the Validity of the Receivership Is Pending on Appeal. ....	30
D.    CLMI Sent an Appropriate Representative to the Mediation, and Resolute Was Not Required to Send a Representative. ....	35
E.    The Sanctions Order Contains Findings on Which CLMI and Resolute Had No Opportunity to Be Heard and That Are Not Supported by Evidence. ....	37
F.    The Sanctions Order Imposes an Excessive Penalty. ....	38
G.    The Sanctions Order Cannot Extend to Resolute. ....	40
CONCLUSION.....	44

**TABLE OF AUTHORITIES**

Page(s)

**CASES**

**South Carolina**

*Arnal v. Fraser*,  
371 S.C. 512, 641 S.E.2d 419 (2007) .....23

*Barnette v. Adams Bros. Logging, Inc.*,  
355 S.C. 588, 586 S.E.2d 572 (2003) .....9

*Boynton v. Consol. Indem. & Ins. Co.*,  
180 S.C. 279, 185 S.E. 731 (1936) .....14

*Brookshire v. Farmers’ All. Exch.*,  
73 S.C. 131, 52 S.E. 867 (1905) .....19

*Bundy v. Shirley*,  
412 S.C. 292, 772 S.E.2d 163 (2015) .....37

*Byerly v. S.C. Nat’l Bank Corp.*,  
313 S.C. 385, 438 S.E.2d 233 (1993) .....11, 12

*Checker Yellow Cab Co. v. Checker Cab & Parcel Serv., Inc.*,  
287 S.C. 608, 340 S.E.2d 549 (Ct. App. 1986).....10

*Clamp v. Hall*,  
287 S.C. 270, 335 S.E.2d 812 (S.C. Ct. App. 1985).....11, 12

*DiMarco v. DiMarco*,  
393 S.C. 604, 713 S.E.2d 631 (2011) .....29

*Doctors Hosp. of Augusta, LLC v. CompTrust AGC Workers’ Comp. Tr. Fund*,  
371 S.C. 5, 636 S.E.2d 862 (2006) .....13

*In re Estate of Connor*,  
No. 2009-UP-502, 2009 WL 9530097 (S.C. Ct. App. Oct. 29, 2009).....32

*Fin. Fed. Credit Inc. v. Brown*,  
384 S.C. 555, 683 S.E.2d 486 (2009) .....41

*Gooding v. St. Francis Xavier Hosp.*,  
326 S.C. 248, 487 S.E.2d 596 (1997) .....35

*Howard v. Allen*,  
254 S.C. 455, 176 S.E.2d 127 (1970) .....16

*Jarrell v. Petoseed Co.*,  
331 S.C. 207, 500 S.E.2d 793 (Ct. App. 1998).....10

*Karppi v. Greenville Terrazzo Co.*,  
327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997).....40

*Kosciusko v. Parham*,  
428 S.C. 481, 836 S.E.2d 362 (Ct. App. 2019).....23

*Kurschner v. City of Camden Plan. Comm’n*,  
376 S.C. 165, 656 S.E.2d 346 (2008) .....38

*Lancaster v. Ga.-Pac. Corp.*,  
403 S.C. 136, 742 S.E.2d 867 (2013) .....31

*Long v. McMillan*,  
226 S.C. 598, 86 S.E.2d 477 (1955) .....23

*State ex rel. McLeod v. Holcomb*,  
245 S.C. 63, 138 S.E.2d 707 (1964) .....23

*Midlands Util., Inc. v. S.C. Dep’t of Health & Env’t Control*,  
301 S.C. 224, 391 S.E.2d 535 (1989) .....19

*Patel v. Patel*,  
359 S.C. 515, 599 S.E.2d 114 (2004) .....9

*PCS Nitrogen, Inc. v. Cont’l Cas. Co.*,  
436 S.C. 254, 436 S.E.2d 590 (2022) .....16

*Pee Dee Health Care, P.A. v. Est. of Thompson*,  
424 S.C. 520, 818 S.E.2d 758 (2018) .....9

*Phillips v. Phillips*,  
288 S.C. 185, 341 S.E.2d 132 (1986) .....25, 26

*Pollock v. Carolina Interstate Bldg. & Loan Ass’n*,  
48 S.C. 65, 25 S.E. 977 (1896) .....18, 32

*Poston v. Poston*,  
331 S.C. 106, 502 S.E.2d 86 (1998) .....27, 29, 30, 35

*Sangamo Weston, Inc. v. Nat’l Surety Corp.*,  
307 S.C. 143, 414 S.E.2d 127 (1992) .....16, 17

*Spartanburg Cnty. Dep’t of Soc. Servs. v. Padgett*,  
296 S.C. 79, 370 S.E.2d 872 (1988) .....35

*State v. Harper*,  
297 S.C. 257, 376 S.E.2d 272 (1989) .....2

*State v. Havelka*,  
285 S.C. 388, 330 S.E.2d 288 (1985) .....24

	<u>Page(s)</u>
<i>Stokes-Craven Holding Corp. v. Robinson</i> , 416 S.C. 517, 787 S.E.2d 485 (2016) .....	31, 32, 33
<i>Thornton v. Alford</i> , 274 S.C. 1, 260 S.E.2d 179 (1979) .....	33
<i>Tibbs v. 3M Co.</i> , No. 2023-CP-40-01759 (S.C. Ct. C.P. 5th Cir.) .....	3
<i>Va.-Carolina Chem. Co. v. Hunter</i> , 84 S.C. 214, 66 S.E. 177 (1909) .....	14, 15, 18
<i>Welchel v. Boyter</i> , 260 S.C. 418, 196 S.E.2d 496 (1973) .....	25, 26
<b>Other Jurisdictions</b>	
<i>Am. Ins. Ass'n v. Garamendi</i> , 539 U.S. 396 (2003) .....	22
<i>Anderson v. Dunn</i> , 19 U.S. (6 Wheat.) 204 (1821) .....	24
<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965) .....	38
<i>In re Bannwart</i> , 439 S.W.3d 417 (Tex. App. 2014) .....	28
<i>Bhd. of Locomotive Firemen &amp; Enginemen v. Bangor &amp; Aroostook R.R. Co.</i> , 380 F.2d 570 (D.C. Cir. 1967) .....	42
<i>Bloom v. Illinois</i> , 391 U.S. 194 (1968) .....	24
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985) .....	41
<i>Buttitta v. Allied Signal, Inc.</i> , 2010 WL 1427273 (N.J. Super. Ct. App. Div. Apr. 5, 2010) .....	17
<i>In re Chaumette</i> , 439 S.W.3d 412 (Tex. App. 2014) .....	28
<i>Chy Lung v. Freeman</i> , 92 U.S. 275 (1875) .....	22
<i>Citronelle-Mobile Gathering, Inc. v. Watkins</i> , 943 F.2d 1297 (11th Cir. 1991) .....	39
<i>Consolidation Coal Co. v. Local Union No. 1784, United Mine Workers of Am.</i> , 514 F.2d 763 (6th Cir. 1975) .....	42

	<u>Page(s)</u>
<i>Crosby v. Nat’l Foreign Trade Council</i> , 530 U.S. 363 (2000).....	22
<i>CTS Corp. v. Dynamics Corp. of Am.</i> , 481 U.S. 69 (1987).....	20
<i>Cummings v. Missouri</i> , 71 U.S. (4 Wall.) 277 (1867) .....	21
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014).....	17, 40
<i>In re Davis</i> , 305 S.W.3d 326 (Tex. App. 2010).....	29, 42
<i>Hicks ex rel. Feiock v. Feiock</i> , 485 U.S. 624 (1988).....	29, 39
<i>Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.</i> , 592 U.S. 351 (2021).....	17
<i>Gompers v. Buck’s Stove &amp; Range Co.</i> , 221 U.S. 418 (1911).....	29
<i>Grannis v. Ordean</i> , 234 U.S. 385 (1914).....	38
<i>Green v. United States</i> , 356 U.S. 165 (1958).....	39
<i>Hartford-Empire Co. v. United States</i> , 323 U.S. 386 (1945).....	26, 28
<i>Hilton v. Guyot</i> , 159 U.S. 113 (1895).....	22
<i>Hines v. Davidowitz</i> , 312 U.S. 52 (1941).....	23
<i>Hirson v. United Stores Corp.</i> , 263 A.D. 646 (N.Y. App. Div. 1st Dep’t).....	22
<i>Hoiles v. Watkins</i> , 117 Ohio St. 165, 157 N.E. 557 (1927) .....	14
<i>Ingebrethsen v. Ingebrethsen</i> , 661 A.2d 403 (Pa. Super. Ct. 1995).....	29
<i>Int’l Union, United Mine Workers of Am. v. Bagwell</i> , 512 U.S. 821 (1994).....	24, 29, 30, 35, 39, 41, 43

	<u>Page(s)</u>
<i>Japan Line, Ltd. v. Los Angeles County</i> , 441 U.S. 434 (1979).....	20
<i>Jove Eng'g, Inc. v. IRS</i> , 92 F.3d 1539 (11th Cir. 1996) .....	40
<i>La Société Francaise d'Epargnes et de Prévoyance Mutuelle v. Dist. Ct.</i> , 53 Cal. 495 (1879) .....	21
<i>Lewis v. Murray</i> , 738 S.W.2d 953 (Mo. Ct. App. 1987).....	28, 29
<i>Lindsey v. Normet</i> , 405 U.S. 56 (1972).....	17
<i>Monmouth Inv. Co. v. Means</i> , 151 F. 159 (8th Cir. 1906) .....	20, 21
<i>New Energy Co. of Ind. v. Limbach</i> , 486 U.S. 269 (1988).....	20
<i>NLRB v. Cincinnati Bronze, Inc.</i> , 829 F.2d 585 (6th Cir. 1987) .....	42
<i>NLRB v. Express Publ'g Co.</i> , 312 U.S. 426 (1941).....	25
<i>Philips Med. Sys. Int'l, B.V. v. Bruetman</i> , 982 F.2d 211 (7th Cir. 1992) .....	18, 19
<i>Porter v. Sabin</i> , 149 U.S. 473 (1893).....	18
<i>Republican Mountain Silver Mines, Ltd. v. Brown</i> , 58 F. 644 (8th Cir. 1893) .....	22
<i>Ex Parte Robinson</i> , 86 U.S. (19 Wall.) 505 (1873) .....	24
<i>Schmidt v. Lessard</i> , 414 U.S. 473 (1974).....	25
<i>Shillitani v. United States</i> , 384 U.S. 364 (1966).....	39
<i>Stehle v. Zimmerebner</i> , 2016 Ark. 290, 497 S.W.3d 188 (2016).....	28
<i>Stotler &amp; Co. v. Able</i> , 870 F.2d 1158 (7th Cir. 1989) .....	25, 26

	<u>Page(s)</u>
<i>Swift &amp; Co. v. United States</i> , 196 U.S. 375 (1905).....	28
<i>Taylor v. Hayes</i> , 418 U.S. 488 (1974).....	42
<i>United States v. Goodwin</i> , 457 U.S. 368 (1982).....	17
<i>United States v. Munsingwear, Inc.</i> , 340 U.S. 36 (1950).....	11
<i>United States v. United Mine Workers</i> , 330 U.S. 258 (1947).....	40
<i>Walker v. McLain</i> , 768 F.2d 1181 (10th Cir. 1985) .....	42

### **Constitutional Provisions**

S.C. Const. art. I, § 3.....	24
S.C. Const. art. I, § 22.....	25
U.S. Const. amend. XIV, § 1 .....	24
U.S. Const. art. I, § 8, cl. 3.....	20
U.S. Const. art. I, § 10, cl. 1.....	22

### **Statutes**

S.C. Code Ann. § 14-3-330.....	34
S.C. Code Ann. § 14-3-450.....	33, 34
S.C. Code Ann. § 15-35-910(2).....	15
S.C. Code Ann. § 15-65-10(4).....	13, 14
S.C. Code Ann. § 15-65-10(5).....	12, 13, 14
S.C. Code Ann. § 33-1-400(4).....	13
S.C. Code Ann. § 33-14-320(a) .....	13, 21, 34
S.C. Code Ann. § 38-61-10.....	17

### **Rules**

Rule 6(b)(4), SCADR .....	6, 27, 35, 36, 41
---------------------------	-------------------

	<u>Page(s)</u>
Rule 62(a), SCRCF .....	33, 34
Rule 205, SCACR.....	31, 33, 34
Rule 268(d)(2), SCACR.....	32
<b>Miscellaneous</b>	
Am. Jur. 2d Contempt (1990) .....	26
17 C.J.S. Contempt (2024).....	10, 27
William Meade Fletcher et al., <i>Fletcher Cyclopedia of the Law of Corporations</i> .....	20
Jean H. Toal et al., <i>Appellate Practice in South Carolina</i> (3d ed. 2016) .....	31
Trial Handbook for S.C. Lawyers (5th ed. 2023) .....	23
Charles Alan Wright et al., <i>Federal Practice and Procedure</i> (3d ed. 1998).....	36

## STATEMENT OF THE ISSUES ON APPEAL

Certain Underwriters at Lloyd's, London and certain London market insurance companies subscribing severally (not jointly) to certain excess policies insuring Asbestos Corporation Limited ("ACL") ("Certain London Market Insurers" or "CLMI")<sup>1</sup> and Resolute Management Inc. ("Resolute") appeal the trial court's Order on Plaintiffs' and Receiver's Motion for Sanctions and Contempt Against Resolute Management and Certain Underwriters of Lloyd's of London (the "Sanctions Order"). They present the following issues for appeal:

- I. Do Plaintiffs' settlements of their claims against ACL abate the alleged civil contempt found by the trial court and require vacatur of the Sanctions Order?
- II. Did the trial court abuse its discretion in imposing sanctions against CLMI and Resolute where the receiver with whom they allegedly failed to cooperate was invalidly appointed?
- III. Did the trial court abuse its discretion in imposing sanctions against CLMI and Resolute where (i) the Sanctions Order fails to specify a clear and unambiguous order of the trial court they supposedly violated or the actions CLMI and Resolute must take to purge the contempt, (ii) the trial court entered the Sanctions Order while pending appeals divested the trial court of jurisdiction over matters relating to the ACL receivership, and (iii) the Sanctions Order's findings are factually unsupported?
- IV. Did the trial court abuse its discretion in imposing an excessive \$50,000 daily sanction for purported contempt?
- V. Did the trial court abuse its discretion in sanctioning Resolute even though Resolute was not named in the sanctions motions and had no opportunity to be heard on the issue of sanctions?

---

<sup>1</sup> Certain London market insurance companies as to which certain claims are administered by third-party claims administrator, Resolute Management Inc., consist of The Scottish Lion Insurance Company Ltd., Tenecom Ltd. (as successor to relevant liabilities of Winterthur Swiss Insurance Company), and Yasuda Fire and Marine Insurance Company (UK) Limited, now known as Tenecom Ltd.

## INTRODUCTION

Contempt is “an extreme measure” that is “not to be lightly asserted.” *State v. Harper*, 297 S.C. 257, 258, 376 S.E.2d 272, 273 (1989). In this case, however, the trial court entered an extreme contempt order against CLMI and Resolute, and the measure was very lightly asserted, indeed. The Appellants are not parties to the underlying personal-injury cases, and Resolute was not even named in the motion that gave rise to the contempt finding. The trial court nevertheless entered an order that (1) finds CLMI and Resolute violated an earlier order that did not command them to do anything, (2) sanctions them \$50,000 a day (with no clear description as to how that inordinate penalty could ever be terminated), and (3) was entered at the behest of a receiver with no power because the trial court lacked authority to appoint him. That receiver was improperly appointed to control the affairs of an active, solvent Canadian corporation, contravening the South Carolina Code. Furthermore, he was unconstitutionally appointed because the U.S. Constitution forbids state courts from usurping the authority of foreign governments to regulate the existence and affairs of their own corporations.

For multiple additional reasons, the trial court’s order is fatally flawed. As a threshold matter, the trial court’s Sanctions Order must be vacated because Plaintiffs have settled their claims against ACL, which abates the alleged contempt as a matter of law. If the Court nevertheless reaches the merits, the unjustified, grossly excessive, and unconstitutional Sanctions Order—which imposes a penalty of \$350,000 per week and approximately \$1.5 million per month until CLMI and Resolute achieve compliance with hopelessly opaque obligations that are policed by the receiver himself—still cannot stand. The Sanctions Order does not identify a clear and unambiguous order that CLMI and Resolute supposedly violated, fails to specify any concrete, coherent means of purging the contempt, exceeds the trial court’s jurisdiction, is factually

unsupported, and imposes a staggering daily penalty that, if upheld by this Court, will accrue in perpetuity, subject to the invalid receiver's whim.

Finally, the Sanctions Order cannot conceivably extend to Resolute, which both the trial court and the moving parties recognized was not ACL's insurer, but rather a third-party claims administrator acting as a representative of CLMI. The sanctions motions did not seek to hold Resolute in contempt and were not served on Resolute. As a result, Resolute had no opportunity to be heard before the sanctions were ordered and cannot be held in contempt based on those motions. Moreover, the trial court improperly concluded that it had jurisdiction over Resolute.

For these reasons and as detailed below, the Court should vacate the Sanctions Order.

## STATEMENT OF THE CASE

### A. ACL's Receivership

ACL is a solvent corporation organized under the laws of Canada and actively managed by its board of directors and officers from its Québec headquarters. (Dufour Aff., ¶ 2). It has no assets or other property in South Carolina. (Dufour Aff., ¶¶ 7, 9). ACL has been named as a defendant in several South Carolina personal-injury cases in which the plaintiffs are seeking recovery for asbestos-related injuries; those cases have all been assigned to the trial-court judge whose orders are at issue in this appeal.

In one of those cases, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. C.P. 5th Cir.), ACL entered an appearance in the trial court to raise an objection to personal jurisdiction, which the trial court overruled. ACL subsequently filed an answer and responded to discovery requests to the extent consistent with its confidentiality obligations under the Québec Business Concerns Records Act. (See generally *Tibbs* ACL's Opposition of 8/9/23). The *Tibbs* plaintiffs nevertheless filed a motion to hold ACL in contempt and to strike its pleadings, arguing that ACL had failed to participate in discovery, and, shortly thereafter, filed a motion to appoint a receiver. The trial court

granted the plaintiffs’ motions. In an order entered on September 7, 2023, it found ACL in contempt and struck its pleadings. (*Tibbs* Contempt Order of 9/7/23). And in the Receivership Order entered the same day, it found ACL in default and appointed Peter Protopapas as Receiver for ACL. (*See Tibbs* Receivership Order of 9/7/23) (“Receivership Order”). The Receivership Order grants the Receiver sweeping powers over ACL, including the powers (i) to “endorse and cash all checks and negotiable instruments payable to ACL relating to insurance assets”; (ii) to “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”; and (iii) to “assume control of the defense of asbestos claims made against ACL in the United States.” (*Tibbs* Receivership Order of 9/7/23, pp. 5–6). The appointment of a receiver for ACL follows a now-predictable path for the trial court, which—at the request of the same plaintiffs’ firms—has appointed Mr. Protopapas as receiver for *twenty-four* separate asbestos defendants over the past five years, the majority of which are non-South Carolina corporations and several of which, like ACL, are still active companies. (*See* Travelers’ Petition for Rehearing, pp. 17–18, *Childers v. Davis Mech. Contractors*, No. 2024-000005 (S.C. Sup. Ct. filed Apr. 11, 2024)).

ACL has appealed the trial court’s orders striking its pleadings and appointing a receiver. (*See Tibbs* Notice of Appeal of 9/13/23).

## **B. Proceedings Regarding CLMI and Resolute**

In the two asbestos personal-injury cases at issue in this appeal—*Link* and *Donaghy*—ACL was one of the defendants until, following entry of the Sanctions Order, the Receiver reached a settlement with Plaintiffs, announced by the Receiver at a hearing on April 10, 2024. CLMI and Resolute, by contrast, are not parties to either of these cases. CLMI are insurers that issued policies obligating them to indemnify ACL for certain liabilities; those policies do not allow CLMI to control the defense or settlement of any claim against ACL. Unlike CLMI, Resolute is not an

insurer of ACL; it is a third-party claims administrator on behalf of certain ACL insurers, including CLMI.

On January 11, 2024, the Receiver had purportedly served a subpoena on CLMI—by delivery of the subpoena to the South Carolina Department of Insurance—that directed CLMI to search for and produce a comprehensive record of all policies issued to ACL and all related underwriting files and communications for a period spanning approximately 80 years. On February 6, 2024, CLMI objected to the subpoena on multiple grounds, including that the *Tibbs* Receivership Order was on appeal, divesting the trial court of jurisdiction over all matters related to that Order. Nonetheless, CLMI produced copies of policies issued to ACL, consistent with the Receiver’s instruction. (*See, e.g.*, CLMI’s Combined Opposition of 3/11/24, Exs. 6, 7).

Meanwhile, ACL—actively managing its own affairs from its Canadian headquarters—took the position that, while ACL’s appeal of the Receivership Order remains pending, the Receiver is without authority to act on ACL’s behalf, including the authority to tender claims to CLMI and to control ACL’s defense in any litigation. As a result, on February 8, 2024, CLMI explained to the Receiver that they had received irreconcilable instructions from ACL and the Receiver. CLMI recommended that these cases against ACL be stayed pending resolution of the appeals regarding the Receiver’s appointment. The Receiver declined to seek a stay.

ACL itself did not seek a stay of the litigation pending against it, apparently because the trial court declared that the Receiver—not ACL itself—was in control of the litigation against ACL. The trial court made that pronouncement in an order entered in these cases on February 23, 2024 (the “Mediation Order”)—an order to which CLMI and Resolute, as nonparties to the cases, were not afforded an opportunity to respond or object—stating that “[t]he Receiver for . . . ACL shall be viewed as the named insured and the representative for . . . ACL in the defense of asbestos

litigation matters and the management of any insurance or insurance-related assets.” (Order of 2/23/24, p. 5). It further said that “[t]he insurers for . . . ACL are expected to cooperate with the Receiver,” including in discovery matters, and it directed the insurers to appear for mediation through “a representative of the insurance carrier who is not the carrier’s outside counsel and who has full authority to settle the claim.” (Order of 2/23/24, pp. 5–6 (quoting SCRADR 6(b)(4))). ACL appealed the Mediation Order to this Court. (*Link* Notice of Appeal of 3/4/24; *Donaghy* Notice of Appeal of 3/4/24).

On March 6, 2024, mediator Thomas Wills held a court-ordered confidential mediation in these actions in Charleston, South Carolina. In full compliance with Rule 6 of the South Carolina Court-Annexed Alternative Dispute Resolution Rules and the trial court’s Mediation Order, a representative of CLMI, David Breslau, Senior Asbestos Claim Analyst in the Asbestos Strategic Unit at Resolute, was physically present with full authority to authorize resolution of both cases, subject to the terms and conditions of the applicable policies. (*See* Breslau Aff., ¶¶ 1–6, 8). The attendance of Mr. Breslau, an employee of CLMI’s third-party claims administrator Resolute, satisfied the Mediation Order’s requirement that “a representative of the insurance carrier who is not the carrier’s outside counsel” be present. (Order of 2/23/24, p. 6 (quoting Rule 6(b)(4), SCADR)). The Mediation Order did not contain any separate directions as to Resolute, which is not an insurance company and thus not subject to the Order’s mediation obligations.

Nevertheless, on March 7, 2024, the Receiver filed a motion arguing that CLMI “failed to meaningfully attend the mediation” and seeking sanctions against CLMI for allegedly violating the Mediation Order and failing to comply with Rule 6 of the South Carolina Rules of Alternative Dispute Resolution. (*See* Receiver’s Motion of 3/7/24, p. 4). Plaintiffs in both the *Link* and

*Donaghy* suits filed a similar motion, seeking a daily fine of \$50,000 from CLMI. (Pls.’ Motion of 3/7/24, p. 4).

Neither motion sought to hold Resolute—which serves as CLMI’s claims administrator—in contempt, nor was either motion served on Resolute. (Pls.’ Motion Certificate of Notification of 3/7/24; Receiver’s Motion Certificate of Notification of 3/7/24; Receiver’s Subpoena Service Notice of 3/8/24; Receiver’s Hearing Service Notice of 3/11/24). Accordingly, Resolute did not file an opposition or appear at the March 13 hearing on the motions.

At the hearing, the trial court found CLMI *and Resolute* in contempt and ordered sanctions against CLMI, but not Resolute, of \$50,000 per day; the court directed Plaintiffs and the Receiver to submit a proposed order memorializing its ruling. (*See* Tr. of 3/13/24 Hr’g, p. 76:9–25). In their joint proposed sanctions order, however, Plaintiffs and the Receiver proposed imposing sanctions against *both* CLMI and Resolute. (*See* Proposed Order of 3/15/24). CLMI objected to the proposed contempt findings and sanctions, including on the ground that Resolute was not a proper subject of the order. (*See* CLMI’s Objection of 3/11/24).

On March 22, 2024, over CLMI’s objections, the trial court adopted the proposed order submitted by Plaintiffs and the Receiver, and found both CLMI and Resolute in contempt. In the Background section of the Sanctions Order, the trial court pointed to the Mediation Order, which it described as “direct[ing] [CLMI] and other carriers[] to cooperate with the Receiver.” (Order of 3/22/24, p. 3). The court then proceeded to find that CLMI and Resolute “continue to disregard this Court’s appointment of the Receiver as being in possession of ACL’s insurance assets and the right to control the defense of ACL,” that “[n]either [CLMI] nor Resolute appeared” at the March 6 mediation “with any authority to resolve the case,” and that “their actions are in contempt of this Court’s orders”—which the trial court failed to identify. (Order of 3/22/24, pp. 6–7). The trial

court ordered “Resolute and [CLMI] . . . to pay into the registry of the Court fifty-thousand dollars (\$50,000) per day for each day that they are in violation of [the] Court’s [unspecified] orders.” (Order of 3/22/24, p. 7). Although the trial court mandated “[s]trict compliance” with its Sanctions Order, it did not identify what specific actions CLMI and Resolute must take to purge the contempt; rather, it ordered the Receiver “to advise the Court if and when compliance with this Court’s orders is achieved.” (Order of 3/22/24, pp. 7–8). The Sanctions Order further directed CLMI to “reimburse the Receiver” \$65,000 that he “ha[d] advanced to defense counsel” for ACL—which CLMI promptly did after entry of the Order—and that “[a]n individual representative of [CLMI], who is not affiliated with Resolute, shall be present at all future proceedings in this matter, including but not limited to, court hearings, trial, and mediation.” (Order of 3/22/24, pp. 7–8).

CLMI and Resolute filed and served notices of appeal to this Court. Separately, they also moved the trial court for a writ of supersedeas, requesting that the trial court stay the Sanctions Order *nunc pro tunc* to the date it was entered, pending resolution of CLMI’s and Resolute’s appeals. The trial court granted supersedeas of the \$50,000 daily sanction on March 27, 2024, but specified that “[t]he balance of the Sanctions order will remain in effect.” (Order of 3/27/24, p. 7). In its order granting supersedeas, the trial court listed seven actions that CLMI and Resolute have taken to comply with the Sanctions Order—including producing all alleged ACL policies to the Receiver, providing the Receiver with settlement authority in these cases, and sending representatives to a mediation on March 27—and stated that these steps “must be verified before sanctions could be lifted.” (Order of 3/27/24, p. 5). Yet, in the weeks since the trial court’s order, neither the Receiver nor the trial court has indicated that the contempt sanctions will be lifted or specified additional actions CLMI or Resolute must take to purge the contempt.

At a hearing on April 10, 2024, the Receiver, on behalf of ACL, announced in open court a settlement in principle with Plaintiffs. As of the filing of this brief, the settlement agreements are being finalized.

### **STANDARD OF REVIEW**

“The decision to impose sanctions is one in equity, and thus the appellate court reviews the circuit court’s factual findings de novo. If the appellate court agrees with the factual findings, then it reviews the circuit court’s decision to impose sanctions and the amount of sanctions for an abuse of discretion.” *Pee Dee Health Care, P.A. v. Est. of Thompson*, 424 S.C. 520, 538 n.11, 818 S.E.2d 758, 768 n.11 (2018) (citation omitted). “An abuse of discretion occurs either when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support.” *Patel v. Patel*, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004). “The burden is on the party appealing from the order to demonstrate the trial court abused its discretion.” *Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003).

### **ARGUMENTS**

The Sanctions Order is demonstrably unjust, factually and legally unsound, and manifestly unconstitutional. As a threshold matter, the Sanctions Order should be vacated as to both CLMI and Resolute because Plaintiffs’ settlements with ACL abate the alleged contempt as a matter of law. On the merits, the Sanctions Order—which imposes a draconian \$50,000 daily penalty that, if upheld by this Court, would extend in perpetuity unless the Receiver declares the contempt purged—exceeds the trial court’s powers under South Carolina law and the U.S. Constitution. And, as to Resolute, the Sanctions Order’s legal and factual deficiencies are compounded by the fact that Resolute was denied its constitutionally guaranteed opportunity to be heard before sanctions were ordered against it.

More specifically, CLMI and Resolute cannot be sanctioned for allegedly failing to cooperate with the Receiver because the Receivership Order appointing Mr. Protopapas to manage ACL's affairs violates both South Carolina law and the U.S. Constitution. In addition, the Sanctions Order is independently unlawful because (i) it fails to specify a clear directive in a court order that CLMI and Resolute allegedly disobeyed or the actions that CLMI and Resolute must take to purge the contempt, (ii) the trial court lacked jurisdiction to enter the Sanctions Order in light of pending appeals, (iii) the Sanctions Order rests on an unsubstantiated finding that CLMI and Resolute failed to participate in the March 6 mediation, (iv) the Sanctions Order includes other findings as to which CLMI and Resolute lacked notice and an opportunity to contest, and (v) the arbitrary and unconscionable \$50,000 daily penalty far exceeds the amount necessary to compel compliance. Moreover, the Sanctions Order improperly extends to Resolute, which was not named in the sanctions motions, was not served with the motions, and had no opportunity to respond to, or be heard on, the motions. The Sanctions Order therefore violates Resolute's due-process rights under the South Carolina and U.S. Constitutions.

**I. Plaintiffs' Settlements Abate the Alleged Contempt and Require Vacatur of the Sanctions Order.**

After the trial court issued the Sanctions Order, Plaintiffs in each of these cases settled their claims against ACL. The resolution of Plaintiffs' claims abates the alleged civil contempt found by the trial court and requires vacatur of the Sanctions Order.

Coercive civil contempt orders "generally are abated by a final disposition of the cause in which the contempt occurred." *Checker Yellow Cab Co. v. Checker Cab & Parcel Serv., Inc.*, 287 S.C. 608, 611, 340 S.E.2d 549, 551 (Ct. App. 1986); *see also* 17 C.J.S. Contempt § 201 (2004) (same). In other words, "[c]ivil contempt proceedings designed to coerce compliance generally terminate along with the termination of the main action." *Jarrell v. Petoseed Co.*, 331 S.C. 207,

209–10, 500 S.E.2d 793, 794 (Ct. App. 1998); see *Clamp v. Hall*, 287 S.C. 270, 273, 335 S.E.2d 812, 817 (Ct. App. 1985) (ordering vacatur of civil-contempt order that sought to compel witness testimony where the underlying child-custody dispute had been resolved). Because the trial court’s Sanctions Order was intended to coerce CLMI’s and Resolute’s cooperation with the Receiver and their participation in court-ordered mediation in connection with Plaintiffs’ claims against ACL—and those claims have now been settled—the trial court’s coercive sanctions have abated as a matter of law. With Plaintiffs’ claims against ACL resolved, there is no longer any legal basis for the trial court to use a coercive civil contempt order to compel CLMI and Resolute to cooperate with the Receiver in the defense of those claims and to send appropriate representatives to mediate the claims. The Court should therefore vacate the Sanctions Order.

The propriety of vacatur is confirmed by mootness principles protecting those aggrieved by orders in cases that were later resolved. Because the alleged civil contempt found by the trial court abated by force of law before CLMI and Resolute had an opportunity to secure a ruling on the merits in this Court, the Sanctions Order should be vacated so as to “eliminate[] a judgment, review of which was prevented through happenstance,” and prevent the “possibility of prejudice from the decision.” *Byerly v. S.C. Nat’l Bank Corp.*, 313 S.C. 385, 386, 438 S.E.2d 233, 233 (1993) (per curiam) (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950)). Vacatur under such circumstances is established practice under South Carolina law. In *Byerly*, for example, the Supreme Court held that vacatur was appropriate where the plaintiff—who had obtained an injunction against the defendant with respect to property in which she held a life estate—died during the pendency of the appeal. *Id.* at 387, 438 S.E.2d at 233. The Supreme Court reasoned that it “would be entirely inequitable” for a lower court’s order entering an injunction against the defendant to be left in place where “the matter has become moot through no fault of the” defendant.

*Id.* at 386–87, 438 S.E.2d at 233; *see Clamp*, 287 S.C. at 273, 335 S.E.2d at 817 (remanding with instructions to vacate contempt order because resolution of underlying dispute had mooted appeal).

So, too, here, where it would be inequitable to leave any portion of the Sanctions Order on the books now that the alleged contempt has been abated without an opportunity for CLMI and Resolute to secure an appellate ruling on the underlying merits of the Sanctions Order. The Court should declare the contempt abated and vacate the Sanctions Order because “‘review’” of the Order’s merits “‘was prevented through happenstance’” of a settlement of Plaintiffs’ claims against ACL. *Byerly*, 313 S.C. at 386, 438 S.E.2d at 233.

## **II. The Receivership Order Is Unlawful.**

If the Court reaches the merits, vacatur of the Sanctions Order remains the appropriate, and legally compelled, outcome. The Sanctions Order is premised on the alleged failure of CLMI and Resolute to cooperate with Mr. Protopapas in his purported role as the named insured under the ACL policies and capacity as ACL’s receiver. Because the Receivership Order violates both South Carolina law and the U.S. Constitution, the Sanctions Order cannot stand.

### **A. The Receivership Order Violates South Carolina Law.**

As a sanction for alleged discovery violations, the trial court relied on S.C. Code Ann. § 15-65-10(5) (2005) to appoint a receiver for ACL, a solvent Canadian corporation that is actively managing its own affairs. (*See Tibbs* Receivership Order of 9/7/23, p. 2). That provision authorizes a court to appoint a receiver only where “provided by law” or “in accordance with the existing practice.” S.C. Code Ann. § 15-65-10(5). Nothing in South Carolina law or practice authorizes appointment of a receiver for a solvent foreign corporation with no property in the State, or to appoint a receiver for any corporation—foreign or domestic—as a discovery sanction.

South Carolina law does not authorize the appointment of a general receiver to manage a foreign corporation’s affairs. Rather, the South Carolina Code provides that a court “in a judicial

proceeding brought to dissolve a corporation” may “appoint receivers to wind up and liquidate . . . the business and affairs of the corporation.” S.C. Code Ann. § 33-14-320(a) (2005). And the Code defines “[c]orporation” to encompass only a “domestic corporation” and to specifically *exclude* “a foreign corporation.” *Id.* § 33-1-400(4) (defining “[c]orporation” as “a corporation for profit, which is not a foreign corporation, incorporated pursuant or subject to the provisions of Chapters 1 through 20 of this Title”). Thus, even if the *Tibbs* case in which Mr. Protopapas was appointed as ACL’s receiver were a “judicial proceeding brought to dissolve a corporation” within the meaning of Section 33-14-320(a)—which, as an asbestos personal-injury suit, it was *not*—the trial court would have lacked statutory authority to appoint a receiver for ACL, a Canadian corporation.

The in-state limits on the power to appoint a general receiver are confirmed by the well-settled “principle that state statutes generally have no extra-territorial effect,” which “remains a foundation of the respect for individual sovereignty the states must share with one another.” *Doctors Hosp. of Augusta, LLC v. CompTrust AGC Workers’ Comp. Tr. Fund*, 371 S.C. 5, 9, 636 S.E.2d 862, 864 (2006). Because ACL is indisputably a foreign corporation—it is incorporated in Canada, not South Carolina—the trial court transgressed the territorial bounds on its authority by invoking Section 15-65-10(5) to appoint a receiver to take over ACL’s affairs.

The only provision of South Carolina law that authorizes appointment of a receiver in connection with a foreign corporation is S.C. Code Ann. § 15-65-10(4), which, under specified circumstances, authorizes a receiver for the “property within this State of foreign corporations.” But the trial court expressly disclaimed reliance on that provision to appoint Mr. Protopapas as receiver for ACL. (*See Mitchell* Order of 2/23/24, p. 13). In any event, Section 15-65-10(4) would be inapplicable here because ACL has no property in South Carolina; is not “dissolved,” “insolvent,” or “in imminent danger of insolvency”; and has not “forfeited its corporate rights.”

S.C. Code Ann. § 15-65-10(4); *see also Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936) (reversing appointment of a receiver because there was a “total failure of any proof” that the foreign company “has property in this state”).

Nor does the appointment of the Receiver “accord[] with the existing practice” of South Carolina within the meaning of Section 15-65-10(5). “[I]n accordance with the existing practice” is a statutory reference to the practice of courts of equity regarding appointment of receivers (including all limitations and proscriptions recognized by those courts) prior to the enactment of the statute in 1870. *See Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 220, 66 S.E. 177, 179 (1909) (This section “gives the old practice the force of a statute by the enactment that a receiver may be appointed ‘in such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this Code of Procedure.’ The first inquiry is whether the record shows a case warranting the appointment of a receiver under the general jurisdiction and practice of the court of equity, aside from the special provisions of the Code of Procedure.”). The provision is not a general grant of authority to trial courts to appoint receivers as “equitable,” including by relying on their own “practice” of previously doing so. *See Hoiles v. Watkins*, 117 Ohio St. 165, 172, 157 N.E. 557, 559 (1927) (Ohio statute, adopted (like South Carolina’s) from the New York Code of Civil Procedure proposed by David Dudley Field, “necessitates an inquiry into the rule ‘when the usages of equity’ have permitted the appointment of receivers”).

The trial court pointed to no settled practice in equity of appointing receivers for solvent foreign corporations whose affairs are being actively managed by their own boards and officers. Nor did the trial court point to any settled equitable practice of appointing receivers as a discovery sanction. The Receivership Order instead cites *Virginia-Carolina Chemical*, 84 S.C. at 220–21,

66 S.E. at 179, which the trial court described as reflecting a practice authorizing a court to “grant any relief within its jurisdiction appropriate and effective to protect creditors” from “moral fraud” of a “debtor” attempting to defeat its creditors. (*Tibbs* Receivership Order of 9/7/23, p. 3). In that case, the South Carolina Supreme Court concluded that a debtor’s gift of the disputed assets to his sister to try to frustrate creditors constituted a “moral fraud” that justified appointment of a receiver. *Va.-Carolina Chem.*, 84 S.C. at 221–22, 66 S.E. at 179–80.

Applying the *Virginia-Carolina Chemical* standard in these cases, the trial court reasoned that ACL’s assertion of “personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions,” along with “ACL’s continued refusal to participate” in the proceedings, constituted “moral fraud” of a “debtor” that “warrant[ed] the appointment of a receiver.” (*Tibbs* Receivership Order of 9/7/23, p. 3). The trial court’s reasoning was incorrect in multiple respects.

*First*, ACL was not a debtor in the *Tibbs* case; when the Receiver was appointed, the *Tibbs* plaintiffs did not hold a judgment against ACL (and they still do not). *Cf.* S.C. Code Ann. § 15-35-910(2) (2005 & Cum. Supp.) (“‘Judgment debtor’ means the party against whom a foreign judgment has been rendered.”). *Virginia-Carolina Chemical* is therefore inapplicable on its face.

*Second*, ACL has not defrauded anyone. ACL has appeared and defended itself in the asbestos personal-injury cases pending against it in South Carolina, and it has provided discovery responses to the extent consistent with its confidentiality obligations under the Québec Business Concerns Records Act. (*See generally Tibbs* ACL’s Opposition of 8/9/23).

*Third*, ACL’s assertion of a personal-jurisdiction defense—which, together with its invocation of Canadian law to oppose certain discovery demands, was the impetus for the trial court’s decision to appoint a receiver—was hardly fraudulent. (*See* Tr. of Mar. 13 Hr’g, pp. 28:23–29:1, 29:4–8 (statement of the court) (“What is at play here is a refusal of a company that

distributed material in the state of South Carolina that is alleged to have injured people in the state[.] . . . And when a company . . . does not cooperate with the jurisdiction of the Court . . . I appoint receivers . . . .”)). ACL does not have any assets or property in South Carolina, and it has never conducted any business activities in South Carolina. (See *Dufour Aff.*). Moreover, under South Carolina law, any insurance proceeds to which ACL might be entitled to satisfy a judgment entered against it at the end of a case do not constitute property in South Carolina at the case’s inception. See *Howard v. Allen*, 254 S.C. 455, 460–61, 176 S.E.2d 127, 129 (1970) (rejecting plaintiff’s efforts to “attach” insurer’s potential coverage obligations to defendant at inception of case because such potential obligations are not “property” of the insured, and holding that an insurer’s obligations remain “inchoate, conditional, [and] contingent” unless there is a judgment imposing liability”); see also *PCS Nitrogen, Inc. v. Cont’l Cas. Co.*, 436 S.C. 254, 264–65, 436 S.E.2d 590, 595 (2022) (examining *Howard* and reaffirming that, prior to entry of judgment, “the duty to indemnify” is not “a debt subject to attachment” as property within the State, as “the insurer owes the insured nothing until the liability of the insured and the amount thereof has been determined” (internal quotation marks omitted)).

According to the trial court, *Sangamo Weston, Inc. v. National Surety Corp.*, 307 S.C. 143, 414 S.E.2d 127 (1992), establishes that “ACL’s insurance assets . . . are assets within the state of South Carolina.” (Order of 3/22/24, p. 5 & n.3; see also *Tibbs Receivership Order of 9/7/23*, pp. 4–5). But *Sangamo* only involved a choice-of-law issue. See 307 S.C. at 147, 414 S.E.2d at 129 (“it must first be determined which state’s law should be applied in interpreting these insurance contracts”). It did not address when or if an insurance policy may qualify as an asset. Nor did it consider whether a policy issued by an out-of-state insurance company to an out-of-state insured ever can be considered South Carolina property if the insured is sued in South Carolina. Instead,

construing S.C. Code Ann. § 38-61-10—which states that “[a]ll contracts of insurance on property, lives, or interests in this State are considered to be made in the State . . . and are subject to the laws of this State”—the Court concluded that “South Carolina substantive law govern[ed] th[e] dispute” about the scope of coverage because the insured was seeking “coverage solely for the liability it incurred due to its operations within the State of South Carolina.” *Id.* at 148–49, 414 S.E.2d at 130–31.<sup>2</sup>

ACL was therefore well within its rights to raise a personal-jurisdiction defense, which was amply supported by U.S. Supreme Court precedent defining the due-process limits on States’ jurisdiction over out-of-state companies. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (“With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction.”) (alterations and internal quotation marks omitted); *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021) (to be subject to specific jurisdiction in a State, the defendant “must take some act by which it purposefully avails itself of the privilege of conducting activities within the forum State,” and the “contacts must be the defendant’s own choice and not random, isolated, or fortuitous”) (alteration and internal quotation marks omitted). ACL has a due-process right “to present every available defense” to the claims against it, *Lindsey v. Normet*, 405 U.S. 56, 66 (1972)—which includes jurisdictional defenses—and it cannot be punished through the appointment of a receiver for exercising that constitutional right, *see United States v. Goodwin*, 457 U.S. 368, 372 (1982) (“To punish a person because he

---

<sup>2</sup> Nor is it relevant that a court in New Jersey has found that ACL has the requisite minimum contacts with that State to establish personal jurisdiction. (Receiver’s Response of 3/27/24, pp. 3, 11 (citing *Buttitta v. Allied Signal, Inc.*, 2010 WL 1427273 (N.J. Super. Ct. App. Div. Apr. 5, 2010))). The ruling of a New Jersey court regarding ACL’s contacts with *New Jersey* has no bearing on whether ACL is subject to personal jurisdiction in *South Carolina* or on whether the insurance policies issued to ACL, a Canadian company, by non-South Carolina insurers are assets located in South Carolina.

has done what the law plainly allows him to do is a due process violation of the most basic sort.”) (internal quotation marks omitted).

Finally, *Virginia-Carolina Chemical* did not (and could not) authorize the trial court to issue a receivership order that exceeds its jurisdiction. Rather, the opinion emphasizes that any relief ordered must be “within [the court’s] jurisdiction.” 84 S.C. at 220, 66 S.E. at 179. Because ACL is a foreign corporation organized under the laws of Canada and headquartered in Québec—and the trial court’s jurisdiction stops at South Carolina’s borders—*Virginia-Carolina Chemical* provides no support for the trial court’s appointment of a receiver over ACL. And where a receiver has been appointed, the authority of the receiver is no broader than that of the appointing court itself and is thus subject to the same territorial limits. See *Porter v. Sabin*, 149 U.S. 473, 480 (1893) (“The whole property of the corporation *within the jurisdiction of the court* which appointed the receiver . . . remains in its custody, to be administered and distributed by it.”) (emphasis added); see also *Pollock v. Carolina Interstate Bldg. & Loan Ass’n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) (“The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.”) (citation and internal quotation marks omitted).<sup>3</sup>

In addition to invoking *Virginia-Carolina Chemical*, the trial court pointed to *Philips Medical Systems International, B.V. v. Bruetman*, 982 F.2d 211 (7th Cir. 1992), to defend its appointment of the Receiver (see Order of 3/22/24, p. 5). But that opinion is equally inapposite. There, the U.S. Court of Appeals for the Seventh Circuit affirmed a default judgment against, and

---

<sup>3</sup> In the Receivership Order, the trial court invoked *Porter* as support for its extraterritorial appointment of a receiver, stating that, under *Porter*, “[t]he whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver.” (*Tibbs* Receivership Order of 9/7/23, pp. 3–4 (quoting *Porter*, 149 U.S. at 480) (brackets added by trial court)). But the trial court’s bracketed addition of “is” fundamentally altered the meaning of *Porter*’s language, transforming a territorial *limit* on courts’ receivership authority into a boundless *authorization* of extraterritorial powers.

the appointment of a receiver for, a defendant who failed to participate in discovery or otherwise obey court orders. *Philips*, however, involved an *in-state* individual defendant (not exclusively a foreign corporation) and therefore sheds no light on the issues here, where ACL is a foreign corporation incorporated under the laws of, and headquartered in, Canada. *See* 982 F.2d at 212 (noting that the defendant was “an Illinois citizen,” and thus a citizen of the State in which the federal case was initiated). And the authority of a *federal* court to appoint a receiver based on discovery violations says nothing about whether a *South Carolina* court is authorized to appoint a receiver in similar circumstances—a proposition for which the trial court identified no support in South Carolina’s statutes, rules, or case law.

More generally, South Carolina law provides that “[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Midlands Util., Inc. v. S.C. Dep’t of Health & Env’t Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) (citation omitted); *see also Brookshire v. Farmers’ All. Exch.*, 73 S.C. 131, 132, 52 S.E. 867, 867 (1905) (“A court of equity is disinclined to take the control and management of the affairs of a corporation out of the hands of its officers and directors and substitute its receiver therefor.”) (internal quotation marks omitted). Here, ACL exercised its constitutional right to contest the trial court’s personal jurisdiction and explained why, as a matter of Québec law, it could not provide all of the discovery sought. (*See Tibbs* ACL’s Opposition of 8/9/23). In response, the trial court proceeded to hold ACL in contempt and strike its pleadings. With the pleadings struck, the court then found ACL in default and appointed a receiver to effectively dissolve the company. These drastic measures find no footing in South Carolina law or practice.

#### **B. The Receivership Order Violates the U.S. Constitution.**

The Receivership Order is also invalid because it violates the Commerce Clause of the United States Constitution and intrudes on the federal government’s foreign-affairs authority.

These constitutional limits reflect the territorial boundaries of state power and are consistent with the limits on the trial court’s receivership authority embodied in the South Carolina statutes and case law discussed above.

The Commerce Clause of the United States Constitution provides that “Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States.” U.S. Const. art. I, § 8, cl. 3. The negative implication of the Commerce Clause (sometimes called the “dormant Commerce Clause”), in turn, restricts States from infringing on Congress’s authority in this area by enacting laws that unduly burden, impair, or discriminate against interstate or foreign commerce. *See Japan Line, Ltd. v. Los Angeles County*, 441 U.S. 434, 449 (1979); *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273–74 (1988).

Considering these constitutional limits on States’ regulation of interstate and foreign commerce, a corporation’s State (or country) of incorporation is the only jurisdiction that can provide laws governing the formation—and dissolution—of a corporation. *See, e.g., CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89–90 (1987) (corporations are a “product of state law . . . organized under, and governed by, the law of a single jurisdiction, traditionally the corporate law of the State of its incorporation”); *see also* 17A William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Corporations* § 8554 (“The general rule is that neither the courts of a particular state nor the federal courts sitting in the state have power to dissolve a corporation of another state or country. . . . The same is true regarding the appointment of a general receiver for a corporation.”).

Accordingly, a State may not dissolve corporations incorporated in other States—or in other countries. Yet, the Receivership Order appoints a receiver to take over the affairs of ACL, effectively dissolving a solvent Canadian corporation capable of actively managing its own affairs and displacing ACL’s duly appointed officers and directors. *See Monmouth Inv. Co. v. Means*,

151 F. 159, 166 (8th Cir. 1906) (“the effect of placing a corporation in the hands of a receiver, displacing its governing board of directors, incidentally works its practical dissolution”); *La Société Francaise d’Epargnes et de Prévoyance Mutuelle v. Dist. Ct.*, 53 Cal. 495, 550 (1879) (appointment of a receiver to manage the affairs of a corporation “*dissolve[s]* a corporation; for the power of a Receiver, when put in motion, of necessity supersedes the corporate power”). By effectively dissolving ACL, the Receivership Order intrudes on the ability of Canada to govern the affairs of a Canadian corporation and the ability of Congress to regulate ACL’s cross-border commercial activities. In so doing, the Order contravenes the dormant Commerce Clause. *See Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867) (Because the “Constitution deals with substance, not shadows,” a state court cannot accomplish indirectly what it is forbidden to do directly).<sup>4</sup>

The trial court nonetheless reasoned that “principles of comity, which deter a state court from reaching beyond a state’s borders and asserting jurisdiction over . . . property located in another jurisdiction[,] . . . support a state court’s authority to vest a statutory receiver to assert an

---

<sup>4</sup> The Receiver argued in the trial court that his receivership does not dissolve ACL because it is only temporary and “limited to ACL’s insurance assets and asbestos-related claims.” (Receiver’s Response of 3/27/24, pp. 15–16). But the Receivership Order contains no temporal limitation and, among other broad powers, authorizes the Receiver to “take any and all steps necessary to protect the interests of ACL whatever they may be” and “to assume the control of the defense of *all litigation matters pending in the United States* against ACL.” (*Tibbs* Receivership Order of 9/7/23, pp. 6–7 (emphasis added)). And the Mediation Order states that “[t]he Receiver for . . . ACL shall be viewed as the named insured and the representative for . . . ACL in the defense of asbestos litigation matters”—again, without any temporal limitation. (Order of 2/23/24, p. 5). By “displacing [ACL’s] governing board of directors” in these areas, the orders “incidentally work[] [ACL’s] practical dissolution.” *Monmouth Inv. Co.*, 151 F. at 166. In any event, as discussed above, South Carolina permits the appointment of a general receiver only “in a judicial proceeding brought to dissolve a corporation” and only “to wind up and liquidate . . . the business and affairs of the corporation.” S.C. Code Ann. § 33-14-320(a) (2005) (emphases added). Thus, as a matter of South Carolina law, the appointment of the Receiver could only be effective if the trial court had power to effectuate ACL’s dissolution—which it did not.

insolvent corporation’s rights of action.” (*Tibbs* Receivership Order of 9/7/23, p. 4 (citing *Hirson v. United Stores Corp.*, 263 A.D. 646 (N.Y. App. Div. 1st Dep’t), *aff’d*, 43 N.E.2d 712 (N.Y. 1942))). But invoking comity to justify South Carolina’s interference with the affairs of a Canadian corporation gets comity exactly backward. Comity demands *respecting* Canada’s right to establish a legal framework governing ACL’s affairs as well as ACL’s own right under Canadian law to manage its affairs—not unilaterally imposing a South Carolina receiver and South Carolina law on a Canadian corporation. *See, e.g., Republican Mountain Silver Mines, Ltd. v. Brown*, 58 F. 644, 648 (8th Cir. 1893) (reversing order appointing receiver for British corporation because the “court had no inherent power, as a court of equity, to dissolve the company”).

In any event, even if the trial court’s version of comity were sound, principles of comity cannot prevail over constitutional demands. *See Hilton v. Guyot*, 159 U.S. 113, 163–64 (1895) (comity interests are not “a matter of absolute obligation”). Indeed, in the *Hirson* opinion on which the trial court relied, the New York Appellate Division (affirmed by the Court of Appeals) held that the courts of New York could *not* appoint a receiver for a Delaware corporation, in part because “local policy is not permitted to dominate rules of comity” owed to other States’ laws, in part because of the demands of full faith and credit. 263 A.D. at 649–50, 34 N.Y.S.2d at 127–28. *Hirson* thus rejects appointment of a receiver for a foreign corporation.

The Receivership Order also transgresses the federal government’s exclusive authority over foreign affairs. *See* U.S. Const. art. I, § 10, cl. 1; *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875). That authority preempts state laws, rules, or orders whenever there is a “likelihood” that the State’s action will “produce something more than incidental effect” on foreign affairs. *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 420 (2003); *cf. Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 381 (2000) (the Nation must speak “with one voice in dealing with [foreign]

governments”). Here, that threshold is readily surpassed. The Receivership Order intrudes on the United States’ foreign relations with Canada by effectively dissolving ACL, a solvent Canadian corporation whose affairs are being actively managed by its Canadian board and officers. The Order thus substantially impairs the federal government’s ability to set national policies concerning international trade and to manage its diplomatic relationship with Canada, an essential trading partner and ally. *See generally Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (a State’s action may not “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”).

**C. The Invalidity of the Receivership Means That CLMI and Resolute Cannot Be Sanctioned for Failure to Cooperate with the Receiver.**

As explained above, the trial court’s order appointing Mr. Protopapas receiver for ACL violates both South Carolina law and the U.S. Constitution and is therefore void. “[I]t is well settled that a party may not be held in contempt for violation of a void order.” *Kosciusko v. Parham*, 428 S.C. 481, 491–92, 836 S.E.2d 362, 368 (Ct. App. 2019); *see also Arnal v. Fraser*, 371 S.C. 512, 522, 641 S.E.2d 419, 424 (2007) (“[A party] cannot be held in contempt for violating an order [that] was void *ab initio* for a lack of jurisdiction.”). Accordingly, the trial court cannot hold CLMI or Resolute in contempt or enter sanctions against them for allegedly failing to cooperate with an invalidly appointed receiver. In fact, it is hornbook law that “[d]isobedience of a void order, judgment or decree, or one issued without jurisdiction of subject matter or parties, is not contempt.” Trial Handbook for S.C. Lawyers § 5.6 (5th ed. 2023) (citing *Long v. McMillan*, 226 S.C. 598, 86 S.E.2d 477 (1955); *State ex rel. McLeod v. Holcomb*, 245 S.C. 63, 138 S.E.2d 707 (1964)).

Because CLMI and Resolute cannot be sanctioned for alleged noncooperation with the Receiver and because the trial court’s Sanctions Order rests in part on that alleged noncooperation (*see* Order of 3/22/24, pp. 6–7), the Sanctions Order must be vacated. In any event, as explained

below, *see infra* Part III.D, the other basis for the Sanctions Order—CLMI’s and Resolute’s alleged conduct during the March 6 mediation proceeding—is equally inadequate.

### **III. The Sanctions Order Is Unlawful.**

The Sanctions Order should be vacated because it rests in part on the invalid Receivership Order. Additionally, multiple, independent deficiencies in the Sanctions Order also require vacatur.

Courts possess the inherent power to impose sanctions for contempt in service of “the due administration of justice.” *Ex Parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1873); *see also State v. Havelka*, 285 S.C. 388, 389, 330 S.E.2d 288, 288 (1985) (“The power to punish for contempt is inherent in all courts”). But the contempt power is “uniquely . . . liable to abuse,” as it “leave[s] the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct” at issue. *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994) (internal quotation marks omitted); *see also Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 228 (1821) (noting that this consolidation of power may lead to “the most tyrannical licentiousness”). Consequently, courts must exercise the contempt power with great “care . . . to avoid arbitrary or oppressive conclusions.” *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) (internal quotation marks omitted).

The trial court failed to heed these cautionary principles when entering the Sanctions Order without identifying a clear court directive that CLMI and Resolute supposedly violated or what they must do to purge themselves of contempt. As a result of these and other serious deficiencies, the Sanctions Order fails to afford CLMI and Resolute the due process of law to which they are entitled under the South Carolina and U.S. Constitutions. U.S. Const. amend. XIV, § 1 (“No State shall . . . deprive any person of life, liberty, or property, without due process of law”); S.C. Const. art. I, § 3 (no person “shall . . . be deprived of life, liberty, or property without due process of law”);

*id.* § 22 (“No person shall be . . . deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly”).

**A. The Sanctions Order Does Not Identify a Clear and Unambiguous Prior Order That CLMI and Resolute Violated.**

Due process prohibits the trial court from holding CLMI and Resolute in contempt “for violating a court order which fails to tell [them] in definite terms what [they] must do.” *Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973). Under South Carolina law and the U.S. Constitution, such an order “command[s] nothing” and cannot support a valid contempt finding. *Id.*; *see also Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (“basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed”). Consequently, “[t]o hold a party in contempt, the [trial] court must be able to point to a decree from the court which set[s] forth in specific detail an unequivocal command which the party in contempt violated.” *Stotler & Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir. 1989) (internal quotation marks and citations omitted); *see also NLRB v. Express Publ’g Co.*, 312 U.S. 426, 433 (1941) (if “the courts may be called on to enforce [an order] by contempt proceedings,” the underlying order “must, like the injunction order of a court, state with reasonable specificity the acts which the respondent is to do or refrain from doing”); *Phillips v. Phillips*, 288 S.C. 185, 188, 341 S.E.2d 132, 133 (1986) (“A court need go no further in reviewing the evidence in a contempt action when there is uncertainty in the commands of an order.”). The trial court failed to do so here.

Although the Sanctions Order is not entirely clear, it appears to rely, in part, on the Mediation Order as the basis for its finding of contempt. (Order of 3/22/24, pp. 2–3, 7 (discussing the Mediation Order as “[b]ackground” before finding several pages later that CLMI’s and Resolute’s “actions are in contempt of this Court’s [unspecified] orders”). The lack of clarity about the basis for the contempt finding is a fatal defect that, standing alone, requires vacatur. *See*

*Stotler & Co.*, 870 F.2d at 1163. Moreover, to the extent the Sanctions Order does rest, in part, on the Mediation Order, that predicate for sanctions is fundamentally unfair to CLMI and Resolute because, as nonparties to these cases, they had no notice of the Mediation Order or opportunity to object before it was entered.

In any event, the trial court’s statement in the Sanctions Order that the Mediation Order “directed” CLMI and other insurers “to cooperate with the Receiver” was incorrect. (Order of 3/22/24, p. 3). The Mediation Order actually stated that “[t]he insurers for . . . ACL are *expected* to cooperate with the Receiver.” (Order of 2/23/24, p. 5 (emphasis added)). This language is precatory, not prescriptive, and it cannot support a finding of contempt. It is also categorically inapplicable to Resolute, which is a third-party claims administrator, not an “insurer[ ] for . . . ACL.” Thus, even if CLMI and Resolute had failed to cooperate with the Receiver—which they did not—they would not have failed to comply with any *directive* of the trial court. *See Phillips*, 288 S.C. at 188, 341 S.E.2d at 133 (“[t]he language of the *commands* must be clear and certain rather than implied” to support a contempt finding) (quoting *Welchel*, 260 S.C. at 421, 196 S.E.2d at 498) (emphasis added); 17 Am. Jur. 2d Contempt § 157 (1990) (“Before a person may be held in contempt for violating a court order, the order should inform him in definite terms as to the duties thereby imposed upon him, and the mandate alleged to be violated must be clearly expressed rather than implied.”).

In addition, the trial court’s “expect[ation]” that ACL’s insurers “cooperate with the Receiver” is inherently vague and amorphous—and thus too malleable to support a finding of contempt. *See Hartford-Empire Co. v. United States*, 323 U.S. 386, 410 (1945) (refusing to enforce a contempt order that was “too indefinite”). And it creates an untenable and legally intolerable Catch-22 for ACL’s insurers by requiring them to decide between following directions

from ACL’s Receiver—on pain of a continuation of the contempt sanctions—or following directions from ACL’s duly appointed board and officers—on pain of potential liability to ACL.

Accordingly, the trial court’s findings of contempt and imposition of coercive fines—entered in cases in which CLMI and Resolute are not even parties (and in response to sanctions motions that did not even name Resolute, *see infra* Part III.G)—cannot stand.<sup>5</sup>

**B. The Sanctions Order Does Not Identify a Clear and Unambiguous Means of Purging Contempt.**

In addition to identifying a clear order that the contemnor violated, due process under the U.S. and South Carolina Constitutions requires that a coercive civil contempt order allow the contemnor to purge any contempt by compliance with the prior court order that the contemnor is found to have violated. *Poston v. Poston*, 331 S.C. 106, 112, 502 S.E.2d 86, 89 (1998) (“The conditional nature of the punishment renders the relief civil in nature because the contemnor ‘can end the sentence and discharge himself at any moment by doing what he had previously refused to do.’”). Accordingly, the order “[m]ust be *express* in its commands to the contemnor, spelling out *exactly* what duties and obligations are imposed.” 17 C.J.S. Contempt § 154 (emphasis added; citation omitted); *see also id.* (“[t]he order must state in clear and definite terms what duties it imposes on the contemnor”) (citation omitted). Here, however, the Sanctions Order fails to provide any meaningful specificity to its mandate of “[s]trict compliance.” (Order of 3/22/24, p. 8). Instead, it vaguely alludes to general “compl[iance] with th[e] Court’s orders”—with “compliance” to be assessed by the Receiver—and fails to identify either specific orders with

---

<sup>5</sup> The Mediation Order’s directive that ACL’s insurers appear for mediation through a representative who was not outside counsel and who had full authority to settle the claim is insufficient to salvage the Sanctions Order because, as explained below, *see infra* Part III.D, neither CLMI nor Resolute violated that provision. (Order of 2/23/24, pp. 5–6 (quoting SCRADR 6(b)(4))).

which CLMI and Resolute must comply or specific means by which CLMI and Resolute can demonstrate compliance. (Order of 3/22/24, p. 7).

A coercive civil contempt order that fails to offer a clear way to purge the contempt violates due process. *See Swift & Co. v. United States*, 196 U.S. 375, 396 (1905) (courts “are bound, by the first principles of justice, not to sanction a decree so vague as to put the whole conduct of the defendants’ business at the peril of a summons for contempt”); *Hartford-Empire Co.*, 323 U.S. at 410 (striking a portion of a contempt order because it was “too indefinite for enforcement”). Consistent with these principles, multiple state courts have held that “[v]ague, uncertain judgments and orders which do not set forth the specific requirements for compliance do not inform the contemnor of what he must do in order to purge himself” and are therefore “flawed.” *Lewis v. Murray*, 738 S.W.2d 953, 956 (Mo. Ct. App. 1987); *see also, e.g., In re Bannwart*, 439 S.W.3d 417, 421 (Tex. App. 2014) (“The failure of an order of contempt to specify in clear and unambiguous language what the contemnor is required to do to purge himself and escape the restraint on his liberty renders the order invalid.”).

As particularly relevant here, “[a] judgment is not sufficient if it merely makes a blanket reference to non-compliance with court orders,” *Lewis*, 738 S.W.2d at 956, or when it “leaves open for interpretation the form of the required [action],” stating only that “it must be in a ‘form acceptable to the [trial court],”” *Bannwart*, 439 S.W.3d at 421 (finding a due process violation); *see also In re Chaumette*, 439 S.W.3d 412, 416 (Tex. App. 2014) (same). Rather, a court must designate “the specific actions [the contemnor] must take in order to purge himself of contempt.” *Lewis*, 738 S.W.2d at 957; *see also Stehle v. Zimmerebner*, 2016 Ark. 290, \*7, 497 S.W.3d 188, 193 (2016) (reversing a contempt order for failure to comply with “the familiar rule of law” that a contempt order “must be definite in its terms, clear as to what duties it imposes, and express in its

commands”); *In re Davis*, 305 S.W.3d 326, 330–31 (Tex. App. 2010) (“The order underlying a contempt judgment must set forth the terms of compliance in clear, specific, and unambiguous terms so that the person charged with obeying the order will readily know exactly what duties and obligations are imposed upon her.”).

A contempt order that does not provide clear guidance regarding how contempt may be purged operates as “[a]n unconditional penalty . . . criminal in nature because it is ‘solely and exclusively punitive in character.’” *Hicks ex rel. Feiock v. Feiock*, 485 U.S. 624, 633 (1988); *see also id.* at 631 (“[T]he labels affixed either to the proceeding or to the relief imposed under state law are not controlling and will not be allowed to defeat the applicable protections of federal constitutional law.”); *Ingebretsen v. Ingebretsen*, 661 A.2d 403, 405 (Pa. Super. Ct. 1995) (“[A]ppellant was subject to criminal contempt as she did not have the opportunity to purge herself of the contempt finding.”). Criminal contempt, however, requires substantial additional process beyond what the trial court provided here, including the right to have a jury find guilt beyond a reasonable doubt. *See Hicks*, 485 U.S. at 632; *Bagwell*, 512 U.S. at 826 (“Criminal contempt is a crime in the ordinary sense, and criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings.”) (citations and internal quotation marks omitted); *see also Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 444 (1911) (criminal contempt triggers the right to proof beyond a reasonable doubt); *DiMarco v. DiMarco*, 393 S.C. 604, 607, 713 S.E.2d 631, 633 (2011) (citing *Poston*, 331 S.C. at 113, 502 S.E.2d at 89) (same).

The Sanctions Order fails to comport with these fundamental requirements because it does not identify “the specific actions [CLMI and Resolute] must take in order to purge [themselves] of contempt.” *Lewis*, 738 S.W.2d at 957. The Order states only that the \$50,000 daily “fine will

continue to accrue until [CLMI] and Resolute comply with this Court’s orders”—without identifying any particular order—and leaves it to the Receiver “to advise the Court if and when compliance with th[e] Court’s orders is achieved.” (Order of 3/22/24, p. 7). In fact, immediately following entry of the Sanctions Order, CLMI and Resolute undertook substantial efforts to eliminate any perceived noncompliance with the trial court’s orders—including producing all additional insurance policies and erosion information to the Receiver, providing the Receiver the settlement authority he sought to resolve these cases, and sending representatives to a March 27 mediation—but the trial court declined to deem those measures sufficient to purge the contempt. (See Order of 3/27/24, p. 5). The trial court’s failure to provide CLMI and Resolute with the metaphorical keys to their own jail cell renders its contempt finding criminal in nature, without according CLMI and Resolute any of the procedural safeguards required by the Constitution before a criminal sanction can be imposed, and it therefore violates due process. See *Bagwell*, 512 U.S. at 828 (“[T]he [civil] contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus carries the keys of his prison in his own pocket.”) (internal quotation marks omitted); see also *Poston*, 331 S.C. at 112, 502 S.E.2d at 89 (relying on this same metaphor).

**C. The Trial Court Could Not Sanction CLMI and Resolute for Conduct Related to the Receivership Because the Validity of the Receivership Is Pending on Appeal.**

The trial court’s Receivership Order appointing Mr. Protopapas is currently the subject of an appeal by ACL that is pending before this Court. (See *Tibbs* Notice of Appeal). The trial court lacked authority to adjudicate ACL-related matters—including to order sanctions for alleged noncooperation with the Receiver—and the Receiver lacked authority to continue to act as ACL’s receiver while that challenge to the receivership remained unresolved. The validity of the Mediation Order was also the subject of an appeal to this Court. (See *Link* Notice of Appeal of

3/4/24; *Donaghy* Notice of Appeal of 3/4/24).<sup>6</sup> The trial court therefore lacked jurisdiction for this independent reason as well. It could not hold CLMI and Resolute in contempt for failure to abide by the terms of an order it lacked jurisdiction to enforce.

Under Appellate Court 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. Robinson*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016); *see also* Rule 205, SCACR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal”); *Lancaster v. Ga.-Pac. Corp.*, 403 S.C. 136, 138, 742 S.E.2d 867, 868 (2013) (“[W]e hereby remind the bench and bar that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court.”); *see also* Jean H. Toal et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (“[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”).

Here, the Sanctions Order is directly affected by ACL’s pending appeal—and was therefore beyond the trial court’s jurisdiction—because the sanction for CLMI’s and Resolute’s supposed failure to cooperate with the Receiver and to participate in a mediation where the Receiver represented ACL is wholly dependent on the validity of the Receivership Order. If the Receiver lacks authority over ACL, as ACL is urging on appeal, then the Receiver cannot manage ACL’s affairs, and the trial court cannot sanction Resolute and CLMI for supposedly failing to cooperate with the Receiver or to participate in a mediation at which he represented ACL. Relatedly, because the Receiver’s authority to act on behalf of ACL is founded entirely on the trial court’s jurisdiction, the pending appeals also extinguish his authority to control ACL’s affairs and eliminate any basis

---

<sup>6</sup> While this Court has since dismissed that appeal (*see* Order of 4/12/2024), it remained pending when the trial court entered the Sanctions Order.

for sanctioning CLMI and Resolute for purported noncompliance with the Receiver. *See Pollock*, 48 S.C. at 75, 25 S.E. at 980 (a receiver “is a creature of the appointing power, and cannot have greater power than his creator”).

These conclusions are borne out by persuasive authority from this Court. In *In re Estate of Connor*, No. 2009-UP-502, 2009 WL 9530097 (S.C. Ct. App. Oct. 29, 2009) (per curiam), this Court held that a special administrator of an estate could not take action in the probate court while the validity of his underlying appointment was on appeal. *Id.* at \*2.<sup>7</sup> The Court concluded that the lower court had erred by refusing to dismiss the special administrator’s petition to sell real estate and by finding that the petition was unaffected by the appeal. *Id.* And the Court emphasized that the special administrator’s “authority to pursue a petition to sell estate assets derived from and depended entirely upon his position as special administrator of [the] estate,” which was the subject of the pending appeal. *Id.*

That reasoning applies here. The Receiver may only direct insurance-coverage information requests to CLMI and Resolute or mediate claims against ACL by virtue of the receivership. With the validity of the Receivership Order pending on appeal, the trial court has been divested of jurisdiction over matters “affected by” the relevant appeals and the Receiver has been divested of authority to act on ACL’s behalf. *Stokes-Craven Holding Corp.*, 416 S.C. at 532, 787 S.E.2d at 493. Because the Sanctions Order is premised on CLMI’s and Resolute’s alleged noncooperation with the Receiver in exercising the powers granted to him under the Receivership Order (including through attendance at a mediation at which the Receiver purported to represent ACL), it is plainly a matter affected by the pending appeals. The Sanctions Order is thus jurisdictionally infirm in

---

<sup>7</sup> CLMI and Resolute understand that this unpublished opinion has no precedential value. Rule 268(d)(2), SCACR. The opinion nevertheless demonstrates how this Court has applied Rules 205 and 241 in a context similar to this case.

two distinct respects: (1) the trial court lacked authority to enter the Sanctions Order and (2) the Receiver lacked authority to exercise the receivership powers that underpin the Sanctions Order. *Cf. Thornton v. Alford*, 274 S.C. 1, 3–4, 260 S.E.2d 179, 181 (1979) (“Disobedience of an order issued without jurisdiction is not contempt.”) (citations omitted).

The link between the Mediation Order, from which ACL appealed, and the trial court’s Sanctions Order is also apparent. In fact, the trial court explicitly premised the contempt finding and resulting sanctions on CLMI’s and Resolute’s alleged failure to comply with the terms of the trial court’s “orders,” which appears to include the Mediation Order. (See Order of 3/22/24, p. 3 (discussing the Mediation Order), 7–8 (finding CLMI and Resolute “in contempt of this Court’s orders,” directing them to pay \$50,000 each day “that they are in violation of this Court’s orders,” and mandating that “an individual representative for each of the underwriters or reinsurers of Lloyds” appear for “mediation”). Because ACL’s appeal had divested the trial court of jurisdiction over the Mediation Order under Rule 205, the trial court lacked the authority to hold CLMI and Resolute in contempt for allegedly failing to comply with its terms.

The Receiver argued below that, despite the pending appeals, the trial court’s jurisdiction is preserved under the stay-related provisions of South Carolina Rule of Civil Procedure 62(a) and S.C. Code Ann. § 14-3-450. (See Receiver’s Response of 3/27/24, pp. 17–21). But statutory provisions and rules providing that certain receivership matters are not *stayed* pending appeal do not disturb the mandatory provisions of Appellate Court Rule 205 concerning the *jurisdiction* of the trial court. See *Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494.

Thus, even assuming Civil Procedure Rule 62(a), which applies to “receivership action[s],” applies to the *Tibbs* case in which the Receiver was appointed—and it should not because that case is an asbestos personal-injury action, not a receivership action—Rule 62(a) applies by its terms

only to “Automatic *Stay[s]*” and provides that a “ judgment . . . in a receivership action . . . shall not be stayed . . . during the pendency of an appeal.” Rule 62(a), SCRCP (emphasis added).<sup>8</sup> The rule does not purport to alter or affect the trial court’s jurisdiction under Rule 205, which the trial court must assess separately and which provides for no exceptions other than for “matters not affected by the appeal.” Rule 205, SCACR.

Similarly, S.C. Code Ann. § 14-3-450 states only that “proceedings in *other respects* in the court below shall not be stayed during the pendency” of an appeal regarding a receiver under S.C. Code Ann. § 14-3-330 (emphasis added). That language suggests that the proceedings—which may continue in “other respects”—are stayed with respect to the receivership itself and thus creates no conflict with the trial court’s ability to proceed under Rule 205 only as to matters unaffected by the appeal.<sup>9</sup>

---

<sup>8</sup> A “receivership action” includes only an action in which receivership is the remedy sought, such as a judicial dissolution proceeding seeking to appoint a receiver for a defunct South Carolina corporation. *See* S.C. Code Ann. § 33-14-320(a) (“A court in a judicial proceeding brought to dissolve a corporation may appoint receivers to wind up and liquidate, or custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian.”). No such proceeding was instituted here, nor could it have been, since ACL is not a South Carolina corporation, nor is it defunct or insolvent.

<sup>9</sup> The Receiver below identified an instance where this Court denied a motion seeking to divest a trial court of jurisdiction over matters pertaining to another company’s receivership under Rule 205, SCACR. (*See* Receiver’s Response of 3/27/24, p. 20 & nn.4–5). But the Court there denied the motion on an unrelated procedural ground: the request arose from “an order” of the trial court that was “not properly before” this Court. Nov. 21, 2023 Order at 3, Appellate Case No. 2023-000727. And, while a prior Court of Appeals order in that case allowed trial court proceedings to go forward, it did so in response to a motion to *stay* proceedings, not one urging that the trial court lacked *jurisdiction*. *See* Sept. 8, 2023 Order at 3, Appellate Case No. 2023-000727 (citing two provisions concerning stays without referencing Rule 205). The Court thus appears to have simply declined to consider an alternative argument that was not properly before it. The Court’s recent order denying relief to another ACL insurer under Rule 205 is equally inapposite because the Court dismissed that insurer’s appeal for lack of jurisdiction. (*See Mitchell* Order of 4/12/24). There is no question that this appeal is properly before the Court.

In sum, nothing in the text of these ancillary provisions governing stays in particular circumstances can alter the conclusion that the trial court lacks jurisdiction over matters directly affected by the pending appeals, including all aspects of the ACL receivership.

**D. CLMI Sent an Appropriate Representative to the Mediation, and Resolute Was Not Required to Send a Representative.**

The Sanctions Order is also factually unsubstantiated in finding that CLMI and Resolute failed to send appropriate representatives to the court-ordered mediation. (Order of 3/22/24, pp. 6–7).

South Carolina Alternative Dispute Resolution Rule 6(b)(4) requires the attendance of, “[f]or any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier’s outside counsel and who has full authority to settle the claim.” Rule 6(b)(4), SCADR. The Sanctions Order’s finding that CLMI failed to comply with this rule is unsupported. *See Spartanburg Cnty. Dep’t of Soc. Servs. v. Padgett*, 296 S.C. 79, 83, 370 S.E.2d 872, 874–75 (1988) (“A determination of contempt is within the sound discretion of the trial judge, but is subject to reversal where based on a finding that is without evidentiary support or where there has been an abuse of discretion.”); *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997) (“An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support.”).

The Sanctions Order rests on a finding that CLMI did not appear at the mediation with “full authority” to settle these cases. (Order of 3/22/24, p. 6). But “[c]ivil contempt must be proven by clear and convincing evidence.” *Poston*, 331 S.C. at 113, 502 S.E.2d at 89 (citing *Bagwell*, 512 U.S. 821). And, here, there is absolutely no evidence to support the trial court’s finding. In fact, the only evidence presented to the trial court proves the precise opposite: the Affidavit of David Breslau, Senior Asbestos Claim Analyst in the Asbestos Strategic Unit at Resolute, states that he

was physically present at the mediation as a representative of CLMI with full authority to resolve these cases, subject to the terms and conditions of the applicable policies. (Breslau Aff., ¶¶ 1–6, 8). Although Mr. Breslau happens to be a lawyer, he is not “in-house counsel” for CLMI or Resolute, and he attended the mediation solely in his role as Senior Asbestos Claim Analyst, authorized representative of CLMI. (Breslau Aff., ¶ 5).<sup>10</sup> Mr. Breslau’s presence fully complied with the requirements of South Carolina Alternative Dispute Resolution Rule 6 and the trial court’s orders. The trial court’s Sanctions Order, however, simply concludes the opposite, without evidence.

At a bare minimum, this evidence suggests a factual dispute regarding the basis for the Sanctions Order. In such circumstances, the trial court’s failure to hold a hearing on this evidentiary issue falls below minimum due process requirements. *See* 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2960 (3d ed. 1998) (cautioning that courts “must be careful that no matter how desirable an expeditious procedure may be, the requirements of due process of law are observed,” and noting that only “one court has indicated that no hearing is required in a civil-contempt proceeding *when there is no fact in dispute*”) (emphasis added).

In addition, the trial court’s finding that Resolute had a mediation obligation separate from that of CLMI (*see* Order of 3/22/24, p. 6) is unsupported by the facts and contrary to both South Carolina Alternative Dispute Resolution Rule 6 and the Mediation Order. Both Rule 6 and the trial court’s Mediation Order require that a representative of the *insurance company* attend the mediation with full settlement authority. *See* Rule 6(b)(4), SCADR (“For any insured party against

---

<sup>10</sup> Notably, nothing in South Carolina Alternative Dispute Resolution Rule 6 or the trial court’s Mediation Order would have prevented CLMI from sending *in-house* counsel to the mediation. The only requirement placed on the insurance companies’ representative was that they “not [be] the carrier’s *outside* counsel.” (Order of 2/23/24, p. 6 (emphasis added) (quoting Rule 6(b)(4), SCADR)). And Mr. Breslau is plainly not outside counsel.

whom a claim is made, a representative of the insurance carrier who is not the carrier’s outside counsel and who has full authority to settle the claim” must attend); (Order of 2/23/24, p. 6 (directing the Receiver to “advise . . . ACL’s respective insurers of the requirements of Rule 6”)). But neither command mandates that Resolute—which is a claims administrator and not ACL’s insurer—appear at the mediation in its individual capacity. Because the Receiver has never contended that Resolute is an insurer of ACL—and the trial court identified no evidence to that effect—the Sanctions Order cannot stand as to Resolute. (*See* Order of 3/22/24, p. 3 (CLMI’s “policies are administered in this case by Resolute Management, a third-party administrator”); Receiver’s Response of 3/27/24, p. 2 (describing Resolute as “the third-party administrator” for CLMI’s “policies”)).

**E. The Sanctions Order Contains Findings on Which CLMI and Resolute Had No Opportunity to Be Heard and That Are Not Supported by Evidence.**

The Sanctions Order purports to make several findings of fact regarding the duties and obligations of CLMI and Resolute under policies providing insurance coverage to ACL. In particular, the trial court stated, “it appears that the ACL Insurers”—a term that the court incorrectly defined to include CLMI and Resolute—“are presently the entities currently responsible for insuring ACL.” (Order of 3/22/24, p. 2 n.1; *see also* Order of 3/22/24, p. 3 (“the Receiver has determined that [CLMI] are the carriers currently duty bound to defend and indemnify the ACL at this time”)). These findings are procedurally improper and factually unsupported.

CLMI’s and Resolute’s legal duties and obligations with respect to ACL were not the subject of the sanctions motions filed by Plaintiffs and the Receiver. Neither motion sought a declaration or finding regarding ACL’s insurance coverage—nor could the motions have done so, since CLMI and Resolute are not parties and no pleading or claim was filed against them in these

cases upon which the trial court could base any declaration—and neither Plaintiffs nor the Receiver introduced evidence on that issue in support of their motions. Accordingly, in preparing its opposition to the motions and presenting argument to the trial court, CLMI had no notice that any order on the motions would determine or even implicate their duties or obligations with respect to ACL, and there is no record evidence that CLMI are the “entities currently responsible for insuring ACL.” (Order of 3/22/24, p. 2 n.1). Resolute was in an even worse position because (i) it was not named in the sanctions motions or served with the motions and (ii) it is not an insurance company and thus could not possibly be an “entit[y] currently responsible for insuring ACL.” (Order of 3/22/24, p. 2 n.1).

The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *see also Grannis v. Ordean*, 234 U.S. 385, 394 (1914) (“The fundamental requisite of due process of law is the opportunity to be heard.”); *accord Bundy v. Shirley*, 412 S.C. 292, 303, 772 S.E.2d 163, 169 (2015) (“The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.”) (quoting *Kurschner v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)).

The trial court deprived CLMI and Resolute of due process when it failed to provide notice and an opportunity to respond before purporting to resolve significant coverage-related issues in the Sanctions Order. And even if CLMI and Resolute had been afforded an opportunity to be heard, these findings would still be clearly erroneous because they are entirely unsupported by record evidence.

#### **F. The Sanctions Order Imposes an Excessive Penalty.**

The staggering size of the daily penalty imposed by the Sanctions Order is also factually unwarranted and legally untenable.

By the time the trial court entered supersedeas relief *nunc pro tunc* to the date the Sanctions Order was issued, the \$50,000 daily penalty had already grown to \$300,000. If the penalty were to go back into effect, the cumulative total would again grow by leaps and bounds—reaching \$350,000 per week and approximately \$1.5 million per month. These are extraordinary sums, especially when imposed on entities that are not even parties to the underlying suits (and against one, Resolute, that was not even named in or served with the sanctions motions). And they are compounded by the additional \$65,000 that the Sanctions Order directed CLMI and Resolute to pay the Receiver for “reimburse[ment]” of “defense counsel” fees, as well as the expense of ensuring that an “individual representative for each of the underwriters or reinsurers” of CLMI is present at “court hearings, trial, and mediation.” (Order of 3/22/24, pp. 7–8). Appellate courts have a “special responsibility” to review such sanctions to ensure that the contempt “power is not abused.” *Green v. United States*, 356 U.S. 165, 188 (1958).

While trial courts have discretion in crafting contempt sanctions, “in wielding its contempt powers, a court ‘must exercise the least possible power adequate to the end proposed.’” *Hicks*, 485 U.S. at 637 n.8 (quoting *Shillitani v. United States*, 384 U.S. 364, 371 (1966)). Accordingly, sanctions imposed for civil coercive contempt “cannot be any greater than necessary to ensure . . . compliance” and “may not be so excessive as to be punitive in nature.” *Jove Eng’g, Inc. v. IRS*, 92 F.3d 1539, 1558 (11th Cir. 1996) (internal quotation marks omitted); *see also Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1304 (11th Cir. 1991) (characterizing the requirement as mandated by due process); *Bagwell*, 512 U.S. at 837–38 (explaining that, as contempt fines grow, so too does the due process required before imposing them). Lower courts must therefore consider a variety of factors in setting a coercive civil penalty, including: (1) “the character and magnitude of the harm threatened by continued contumacy”; (2) “the probable effectiveness of

any suggested sanction in bringing about the result desired”; and (3) “the amount of [the to-be-sanctioned entity’s] financial resources and the consequent seriousness of the burden to that particular [entity].” *United States v. United Mine Workers*, 330 U.S. 258, 304 (1947).

The trial court did not engage in this constitutionally required analysis here. In fact, the Sanctions Order offers no justification whatsoever for the daily penalty it imposes on CLMI and Resolute. Even assuming any contempt finding were warranted—and for all the reasons discussed above, it was not—the penalty fails to comport with procedural due process because the court failed to consider whether the sum imposed is truly the minimum amount necessary to encourage the compliance it sought to coerce. *See Jove Eng’g*, 92 F.3d at 1558. And, substantively, the punitive \$50,000 daily sanction is “unduly harsh under the circumstances” and “not limited in scope with regard to the violation” alleged, *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997)—especially in light of the substantial steps that CLMI and Resolute have taken to address the trial court’s concerns in the immediate aftermath of the Sanctions Order, which the trial court deemed insufficient to purge the contempt or even reduce the amount of the daily sanction (*see* Order of 3/27/24, p. 5). Such procedurally and substantively flawed sanctions constitute a gross abuse of discretion and cannot stand. *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682.

**G. The Sanctions Order Cannot Extend to Resolute.**

The Sanctions Order imposes a \$50,000 daily penalty on both CLMI *and* Resolute. Resolute, however, lacked the requisite notice that it would be sanctioned and did not have an adequate opportunity to respond.<sup>11</sup>

---

<sup>11</sup> In addition, Resolute is not subject to personal jurisdiction in South Carolina because Resolute is incorporated in Nebraska, has its principal place of business in Massachusetts, and does not have sufficient suit-related contacts with South Carolina to satisfy the “traditional notions of fair play and substantial justice” that limit state courts’ jurisdictional reach. *Daimler AG*, 571 U.S. at 126

As a threshold matter, the Sanctions Order is flawed with respect to Resolute because it incorrectly states that Resolute is subject to the trial court’s jurisdiction under Rule 6 of the South Carolina Rules of Alternative Dispute Resolution. (See Order of 3/22/24, pp. 5–7). Rule 6 provides that a “representative of the insurance carrier” is to appear at the mediation. Rule 6(b)(4), SCADR. To the extent the ADR Rule can compel nonparty insurers to take actions upon penalty of contempt, that Rule imposes an obligation only on the insurance carrier (here, CLMI) to appear through a representative (which they did through their agent Resolute). Indeed, the Sanctions Order acknowledges that “Resolute appeared at mediation *as the representative of Lloyd’s*”—i.e., CLMI—“*and others.*” (Order of 3/22/24, p. 6 (emphasis added)). That finding was consistent with (1) the trial court’s on-the-record finding that “Resolute is a third party administrator holding itself out as a representative of [CLMI]”; and (2) the Receiver’s own acknowledgement at the hearing on the sanctions motions that Resolute “do[es] third party claims administration” and is “not an insurance company.” (Tr. of 3/13/24 Hr’g, pp. 7:20–8:1, 76:5–8). Rule 6 therefore does not create jurisdiction over Resolute in its individual capacity because it is not itself an insurance carrier subject to Rule 6. This alone requires vacatur.

The trial court’s error was compounded by the fact that Resolute was provided no notice that it was the subject of the contempt proceedings in its individual capacity. Coercive civil contempt may be imposed “in an ordinary civil proceeding” only “upon notice and an opportunity to be heard.” *Bagwell*, 512 U.S. at 827 (contrasting this standard with the heightened requirements

---

(internal quotation marks omitted); see also *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 568, 683 S.E.2d 486, 493 (2009) (Kittredge, J, concurring) (“The first requirement of personal jurisdiction is that a defendant have minimum contacts with the forum state.”) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)). Plaintiffs and the Receiver never attempted to establish that Resolute is subject to personal jurisdiction in these cases before submitting proposed orders that imposed sanctions on Resolute, a nonparty that had not been served with the sanctions motions.

of a criminal-contempt proceeding); *see generally* *Davis*, 305 S.W.3d at 330 (“The due process requirement is one of full and complete notification of the conduct with which the contemnor is charged and the contemnor must be given a reasonable opportunity to meet the charges by defense or explanation.”) (internal quotation marks omitted). These procedural safeguards—the hallmarks of our civil justice system—are especially important in the contempt setting because the “history of contempt litigation,” which provides myriad examples of abuse by trial courts enmeshed in contentious disputes with litigants, “prescribes extreme care and insistence on the full indicia of due process.” *Consolidation Coal Co. v. Local Union No. 1784, United Mine Workers of Am.*, 514 F.2d 763, 765 (6th Cir. 1975) (internal quotation marks omitted); *cf. Taylor v. Hayes*, 418 U.S. 488, 500 (1974) (noting that “[t]hese procedures are essential in view of the heightened potential for abuse posed by the contempt power” and cautioning that “[d]ue process cannot be measured in minutes and hours or dollars and cents”). As a result, courts across the country have repeatedly reaffirmed that “[a] civil contemn[or] is entitled to the procedural safeguards afforded by the due process clause,” including “proper notice and an impartial hearing with an opportunity to present a defense.” *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 589 (6th Cir. 1987) (internal quotation marks omitted); *see also, e.g., Bhd. of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co.*, 380 F.2d 570, 581–82 (D.C. Cir. 1967); *Walker v. McLain*, 768 F.2d 1181, 1184–85 (10th Cir. 1985).

Here, the sanctions motions filed by Plaintiffs and the Receiver did not seek to hold Resolute in contempt; Resolute was not served with or provided notice of the sanctions motions; and the trial court’s oral ruling from the bench did not indicate that it was ordering sanctions against Resolute. Moreover, because Resolute is not a party, it did not enter an appearance at and had no opportunity to be heard during the hearing on the sanctions motions.

The discussion at the hearing offered no hint that Resolute would be sanctioned. The trial court found CLMI in contempt in part as a result of the alleged conduct of their claims administrator, Resolute, but the court ordered the \$50,000 per-day sanction *only as to CLMI*. (See Tr. of 3/13/24 Hr’g. p. 76:17–20 (“I find that both Lloyd’s”—*i.e.*, CLMI—“and its claims management firm, Resolute, are in contempt of the orders of this Court, and I impose sanctions *against Lloyd’s* of \$50,000 per day.”) (emphasis added)). The trial court also stated that “the monetary sanction [would] be lifted at any time that *Lloyd’s, through its claims manager, Resolute*, cooperates with Mr. Protopapas.” (Tr. of 3/13/24 Hr’g. p. 78:8–14 (emphasis added)). These statements clearly contemplate sanctions against CLMI (the principal)—not against Resolute (CLMI’s agent) in Resolute’s individual capacity.

In fact, Resolute first discovered that it may be sanctioned only when it became aware of Plaintiffs’ and the Receiver’s proposed order, submitted after the March 13 hearing, suggesting that the trial court sanction both CLMI and Resolute in the amount of \$50,000 per day. By that point, however, Resolute lacked the requisite “notice and an opportunity to be heard,” *Bagwell*, 512 U.S. at 827, because it had not been afforded the opportunity to file an opposition to the sanctions motions or to appear at the March 13 hearing. Because Resolute was not provided timely notice that it would be sanctioned in this matter and did not have a meaningful opportunity to respond, the Sanctions Order is constitutionally infirm insofar as it extends to Resolute. *See id.*

\* \* \*

The pervasively flawed and flagrantly inequitable Sanctions Order should be vacated. Plaintiffs’ settlements of their claims against ACL abate the alleged contempt found by the trial court. In addition, the Receivership Order that underpins the Sanctions Order is void *ab initio* because it violates both South Carolina law and the U.S. Constitution. And the Sanctions Order is

independently flawed for multiple reasons, including its failure to identify a prior order that CLMI and Resolute supposedly violated or a specific means of purging the contempt, the trial court's lack of jurisdiction over ACL-related matters, the Order's absence of factual substantiation, the trial court's failure to justify its staggering \$50,000 daily penalty, and the Order's application to Resolute, a nonparty that was not even named in the sanctions motions. Because the Sanctions Order is manifestly unfair and demonstrably unconstitutional, it cannot stand.

### CONCLUSION

For the foregoing reasons, this Court should vacate the trial court's Sanctions Order.

Respectfully submitted,

By: /s/ Theodore L. Manos  
Theodore L. Manos  
SC Bar #8660  
Robertson Hollingsworth Manos & Rahn, LLC  
550 King Street, Suite 300  
Charleston, SC 29403  
(843) 723-6470  
tln@roblaw.net

*Attorney for Certain Underwriters at Lloyd's,  
London and Certain London Market Insurance  
Companies*

Stephanie G. Flynn  
SC Bar #16653  
Fox Rothschild LLP  
2 W. Washington Street, Suite 1100  
Greenville, SC 29601  
(864) 751-7607  
sgflynn@foxrothschild.com

*Attorney for Resolute Management Inc.*

April 18, 2024

Charleston, South Carolina