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Apr 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Jean H. Toal  
Acting Circuit Court Judge

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Appellate Case No. 2024-000341  
Circuit Court Case No. 2022-CP-40-02979

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Ted Everett Mitchell, individually and as Executor of the Estate of  
Patsy Ann Mitchell, .....

Plaintiffs

v.

3M Company; ABB Inc.; Advance Auto Parts, Inc.; Air & Liquid  
Systems Corporation; Alfa Laval, Inc.; Amentum Environment &  
Energy, Inc.; Ametek, Inc.; Anchor/Darling Valve Company;  
A.O. Smith Corporation; Armstrong International, Inc.; Asbestos  
Corporation Limited; Atlas Turner, Inc.; AWT Air Company, Inc.;  
Bahnsen, Inc.; Beatty Investments, Inc.; Bechtel Investments, Inc.;  
The Bonitz Company; BW/IP Inc.; Cameron International  
Corporation; Cape PLC; Carrier Corporation; Carver Pump  
Company; Champlain Cable Corporation; Cleaver-Brooks, Inc.;  
Clyde Union Inc.; Covil Corporation; Crane Co.; Crane Instrument  
& Sampling, Inc.; Daniel International Corporation; Davis  
Mechanical Contractors, Inc.; Detroit Stoker Company, LLC;  
Ellington Insulation Company, Inc.; Erico International  
Corporation; Fisher Controls International, LLC; Flowserve US  
Inc.; Fluor Constructors International; Fluor Constructors  
International, Inc.; Fluor Daniel Services Corporation; Fluor  
Enterprises, Inc.; FMC Corporation; Ford Motor Company; Foster  
Wheeler Energy Corporation; Gardner Denver, Inc.; General  
Electric Company; General Parts, Inc.; Genuine Parts Company;  
The Goodyear Tire & Rubber Company; The Gorman-Rupp  
Company; Goulds Pumps, Incorporated; Graphic Packaging  
International, LLC; Great Barrier Insulation Co.; Grinnell LLC;  
Hercules LLC; Honeywell International, Inc.; IMO Industries Inc.;  
Industrial Holdings Corporation; International Paper Company; ITT  
LLC; J.&L. Insulation, Inc.; Metropolitan Life Insurance Company;  
Morse Tec LLC; Moyno, Inc.; NIBCO Inc.; Paramount Global;  
Pennsylvania Transformer Technology, Inc.; Presnell Insulation  
Co., Inc.; Redco Corporation; Rust Engineering & Construction,

Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.;  
Schneider Electric Systems USA, Inc.; Sequoia Ventures Inc.;  
Service Products, Inc.; The Sherwin-Williams Company; Southern  
Insulation, Inc.; Spirax Sarco, Inc.; SPX Corporation; Standard  
Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr  
Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC;  
Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump,  
Inc.; Vistra Intermediate Company LLC; The William Powell  
Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn  
Industries, LLC, .....

Defendants,

Asbestos Corporation Limited, by and through its duly appointed  
Receiver Peter D. Protopapas,.....

Third-Party Plaintiff/  
Respondent,

v.

Century Indemnity Company, as successor to CCI Insurance  
Company, as successor to Insurance Company of North America;  
The Continental Insurance Company; Federal Insurance Company;  
Travelers Casualty and Surety Company f/k/a Aetna Life &  
Casualty Co., .....

Third-Party  
Defendants,

of which

Travelers Casualty and Surety Company f/k/a Aetna Life &  
Casualty Co., is the .....

Appellant.

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TRAVELERS' PETITION FOR REHEARING

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Travelers Casualty and Surety Company respectfully moves the Court to rehear the appealability issue, including with full merits briefing and oral argument, and reconsider its April 12, 2024 Order dismissing this appeal. The Court's unpublished order dismissing this appeal does not address and appears to clash with South Carolina Code § 14-3-330(4). Because any order "granting, continuing, modifying, or refusing the appointment of a receiver" is immediately appealable, and the circuit court's order on appeal both "continu[ed]" the appointment of a receiver over Travelers' objection and "continu[ed]" the Receiver's authority to continue function as a

receiver over an active foreign company despite the pendency of an appeal challenging the appointment order itself, Travelers' appeal is proper. *Id.*

On October 23, 2023, Travelers filed a “Motion to Stay or Dismiss the Third-Party Claims of the Purported Receiver for Asbestos Corporation Limited and to Dissolve the Receivership.” (App. 278, Travelers’ Motion to Stay or Dismiss the Third-Party Claims of the Purported Receiver for Asbestos Corporation Limited and to Dissolve the Receivership (Oct. 23, 2023).) Travelers moved to terminate and discontinue the Receivership immediately, in its entirety, and to vacate the order appointing the Receiver, because the Receivership is unlawful. A South Carolina state court simply does not have the power to appoint a receiver over a foreign corporation like ACL, which has no assets or property in South Carolina. Indeed, the power of a receiver is no greater than that of the court that appointed him, and it extends only to the boundaries of the territorial jurisdiction of the appointing court, here, South Carolina. Because ACL is a Canadian corporation without any assets or property in South Carolina, the appointment order is unlawful and must be undone, and the Receivership must be dissolved. The circuit court denied Travelers’ motion and allowed the receivership to continue. (App. 384, Order Denying Motion to Dissolve (Feb. 26, 2024).) That ruling brings the orders on appeal squarely within the scope of Section 14-3-330(4).

In South Carolina, any order—even an “interlocutory order”—“granting, continuing, modifying, or refusing the appointment of a receiver” is immediately appealable. S.C. Code Ann. § 14-3-330(4). And this immediate, regular appellate oversight makes perfect sense, as appointing a receiver is a “drastic remedy” that should be done only “with reluctance and caution” because it involves the judicial seizure of private property and placing it in the hands of someone else to manage—all while the receiver erodes those same limited resources by claiming a fee from them. *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989). The order on

appeal readily meets Section 330(4)'s terms, as they indisputably "continue" a receivership over a motion to dissolve it.

The appealability analysis is guided by "the effect of" the circuit court's order. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539–40, 773 S.E.2d 144, 146–47 (2015); *see also Williams v. Northwestern Sec. Life Ins. Co.*, 307 S.C. 462, 464–65, 415 S.E.2d 809, 810 (1992) (holding that an order denying a motion to dismiss was immediately appealable under South Carolina Code § 14-3-330(4) because it had the effect of disregarding an injunction required by North Carolina law, and reversing the trial court's refusal to give Full Faith and Credit to foreign law, just as the circuit court has done here).

The order dismissing this appeal clashes with both the plain language of South Carolina Code § 14-3-330(4) and precedent from the South Carolina Supreme Court. In *Porter v. Brown*, the Court reviewed through an immediate appeal and reversed a trial court's denial of a motion to terminate an unlawful receivership because the "receiver was appointed for something that did not exist." 149 S.C. 151, 152–59, 146 S.E. 810, 810–13 (1929). This case is no different. As another example, even though the statute does not expressly state that courts have appellate jurisdiction over an order dissolving a receivership, our Supreme Court has reviewed interlocutory orders dissolving a receivership. *See Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957). The statute uses identical wording for injunctions, and our Supreme Court has likewise reviewed cases dissolving injunctions. *See Lyles v. Williams*, 96 S.C. 290, 80 S.E. 470 (1913); *Bryant v. Epps*, 217 S.C. 361, 60 S.E.2d 685 (1950); *Coward v. Jones*, 167 S.C. 118, 166 S.E. 96 (1932).

Travelers recognizes that the Supreme Court has recently dismissed an appeal of an order denying a motion to dissolve another receivership, *Payne & Keller*. But that unpublished decision does not appear to be supported by the plain language of South Carolina Code § 14-3-330(4),

appears to conflict with the Supreme Court’s prior holdings, and does not address in any way a situation, as here, where a receivership appointment over an active foreign company is allowed to “continue” during the pendency of an appeal involving the appointment order itself in direct violation of Rule 205, SCACR, and the exclusive jurisdiction it vests in this Court over all issues involved in that appeal.

The circuit court’s orders on appeal necessarily “continu[e] . . . the appointment of a receiver” over a motion to terminate it and to cease its actions due to the pendency of the appeal challenging the propriety of the appointment order itself. There is no colorable argument to the contrary.

In prior briefing to this Court, the Receiver has argued that an order denying a motion to immediately cease a receivership somehow does not “continu[e]” an existing receiver’s appointment. (Receiver’s Payne & Keller Mot. at 8–9, 11–15.) According to the Receiver, Section 14-3-330(4) only “appl[ies] to instances where a temporary receivership was explicitly extended in duration, whether made permanent or remaining as a temporary receivership with a later termination date.” (*Id.* at 13.) But on its face, the statutory language is not nearly so limited; to the contrary, it applies to any interlocutory order “continuing . . . the appointment of a receiver.” S.C. Code Ann. § 14-3-330(4). And the cases the Receiver cited do nothing to support his statutory rewrite. They simply reference in passing the unremarkable fact that certain receiverships were temporary, and that such receiverships were sometimes extended or continued. Here, because the circuit court refused to dissolve the Receivership despite clear constitutional barriers to the Receiver’s appointment, and because they allowed the Receiver to continue in violation of Rule 205’s unbending jurisdictional boundaries prohibiting activity below that could affect an issue on

appeal, the order on appeal has wrongly “continued” the Receiver’s appointment over objection and is immediately appealable.

Travelers respectfully requests that the Court reconsider its April 12, 2024 Order dismissing this appeal. The order on appeal is immediately appealable. If the Court disagrees, to assist the Bench and Bar going forward, Travelers respectfully asks this Court to provide some guidance by way of a written opinion, explaining how or why an order that both “continu[es]” an unlawful receivership appointment in the face of a written motion to dissolve the appointment, and “continu[es]” a receivership over an active foreign company during the pendency of an appeal of the initial appointment order in violation of Rule 205, SCACR, is not immediately appealable under South Carolina Code § 14-3-330(4).

Respectfully submitted,

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PROOF OF SERVICE

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I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant Travelers Casualty and Surety Company do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Travelers's Petition for Rehearing

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