

RECEIVED

Apr 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

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

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

Plaintiffs

v.

Advance Auto Parts, Inc.; American Honda Motor Co., Inc.; Atlas
Asbestos Co.; Atlas Turner, Inc., as successor to Atlas Asbestos
Co., a foreign company; Bahnson, Inc.; Covil Corporation; Daniel
International Corporation; Ellington Insulation Company, Inc.;
Fluor Constructors International; Fluor Constructors International,
Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.;
General Parts, Inc., individually and as successor in interest to
Carquest Corporation; Goodrich Corporation, b/k/a The B.F.
Goodrich Company; The Goodyear Tire & Rubber Company;
Graybar Electric Company, Inc.; Honeywell International, Inc.,
individually and as successor in interest to Allied Signal, Inc., as
successor to Bendix Corporation; Morse Tec LLC, f/k/a
Borgwarner Morse Tec LLC, and successor by merger to Borg-
Warner Corporation; Occidental Chemical Corporation, as
successor to Durez Corporation; O'Reilly Automotive Stores, Inc.;
Paramount Global, f/k/a ViacomCBS Inc., f/k/a CBS Corporation, a
Delaware corporation f/k/a Viacom, Inc., successor by merger to
CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse
Electric Corporation; Pneumo Abex LLC, successor in interest to
Abex Corporation; Redco Corporation f/k/a Crane Co.; Reinz
Wisconsin Gasket LLC f/k/a and/or successor to Reinz Wisconsin
Gasket Co. and Wisconsin Gasket Manufacturing Co., a wholly
owned subsidiary of DCO LLC; Rust Engineering & Construction,
Inc.; Rust International Inc.; Southern Insulation, Inc.; Spirax
Sarco, Inc.; Union Carbide Corporation; Westrock MWV, LLC,
individually and as successor in interest to Westvaco; and ZF
Active Safety US Inc., f/k/a Kelsey-Hayes Company,

Defendants,

Atlas Turner, Inc., f/k/a Atlas Asbestos Company, Ltd., by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff/
Respondent,

v.

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

Third-Party
Defendants,

of which

Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co., is the

Appellant.

TRAVELERS’ PETITION FOR REHEARING

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 functioning 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 August 28, 2023, Travelers filed a “Motion to Stay or Dismiss the Atlas Receiver’s Third-Party Claims and to Dissolve the Receivership.” (App. 295, Travelers’ Motion to Stay or Dismiss the Atlas Receiver’s Third-Party Claims and to Dissolve the Receivership (August 28, 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 Atlas, 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 Atlas 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. 438, 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 order on appeal necessarily “continu[es] . . . 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,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
M. Elizabeth O’Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504

STEPTOE LLP

Harry Lee (*pro hac vice application
forthcoming*)
hlee@steptoe.com
1330 Connecticut Avenue, NW
Washington, DC 20036
202.429.3000

Counsel for Appellant Travelers Casualty and Surety Company

April 29, 2024

RECEIVED

Apr 29 2024

SC Court of Appeals

PROOF OF SERVICE

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

Parties Served:

A. Victor Rawl, Jr. (vrawl@grsm.com)

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

Steven J. Pugh (spugh@richardsonplowden.com)
Anthony E. Rebollo (trebollo@richardsonplowden.com)
Caleb M. Riser (criser@richardsonplowden.com)
R. Wilder Harte (wharte@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Third-Party Defendant Canadian General Insurance Company n/k/a Aviva Insurance Co. of Canada

Kevin K. Bell (kbell@robinsongray.com)

Counsel for Third-Party Defendants Century Indemnity Company and Federal Insurance Company

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)

Attorneys for Atlas Turner, Inc. and Asbestos Corporation Limited

Continued on Next Page

Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Austin T. Reed (austin.reed@smithrobinsonlaw.com)

Brian M. Barnwell (bb@rplegalgroup.com)
John K. Chandler (jchandler@rplegalgroup.com)

Counsel for the Receiver for Atlas Turner, Inc., f/k/a Atlas Asbestos Company, Ltd.

Theile B. McVey (tmcvey@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles W. Branham, III (tbranham@dobslegal.com)
Aaron D. Chapman (achapman@dobslegal.com)

Attorneys for Plaintiffs

By: /s/ M. Todd Carroll

April 29, 2024