

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Court of Common Pleas

Honorable Jean Hoefler Toal, Circuit Court Judge

Court of Appeals Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs,

Respondents,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider

Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC,

Of which Asbestos Corporation Limited is

Appellant.

**APPELLANT ASBESTOS CORPORATION LIMITED’S MOTION FOR
CERTIFICATION PURSUANT TO RULE 204(b), SCACR**

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, Appellant Asbestos Corporation Limited (“ACL”) moves this Court to certify this case for review before it is determined by the Court of Appeals. This appeal addresses an issue of significant public interest and a legal principle of major importance: whether the circuit court can appoint a receiver over a foreign company’s assets and property that have never been in South Carolina.¹

FACTS AND PROCEDURAL HISTORY

ACL is an active Canadian company headquartered in the province of Quebec. Prior to 1986, ACL engaged in the mining and milling of raw chrysotile asbestos fiber. ACL’s mining and subsequent sales were performed in Canada.

¹ This Court recently granted the Court of Appeals’ request for certification pursuant to Rule 204(b), SCACR in *Donna B. Welch, individually and as Personal Representative of the Estate of Melvin G. Welch, deceased v. Advance Auto Parts, Inc., et al.*, No. 2022-CP-40-03834 (S.C. Ct. Common Pleas, 5th Cir. August 20, 2024). This case presents the same issue of significant public interest and a legal principle of major importance: whether the circuit court can appoint a receiver over a foreign company’s assets and property that have never been in South Carolina.

ACL has no connection or nexus to South Carolina. ACL does not have a certificate to do business in South Carolina, and it does not own any assets or property in the state. Nevertheless, Respondents John A. Tibbs and Margaret B. Tibbs (collectively, “the Tibbses”) sued ACL and many other defendants in the circuit court for alleged exposure to asbestos.

On September 8, 2023, the circuit court granted the Tibbses’ motion to appoint a receiver (“Receiver Order”) over ACL’s out-of-state assets. (Receiver Order p. 1.) In the Receiver Order, the circuit court found that it had jurisdiction over ACL’s out-of-state insurance assets because they were “in” South Carolina pursuant to section 38-61-10 of the South Carolina Code.² (Receiver Order.) In appointing attorney Peter Protopapas to act as a receiver, the circuit court exclusively cited section 15-65-10(5) of the South Carolina Code.³ (Receiver Order.) The circuit court ordered that the purported receiver had control of all ACL’s insurance assets and that the court’s jurisdiction extended into Canada and had power over an exclusively Canadian company. ACL timely appealed the Contempt Order, Order Striking ACL’s Answer, and the Receiver Order on September 13, 2023.

LEGAL STANDARD

“In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case . . . certify the case for review by the Supreme Court before it has been determined by the Court of Appeals.” Rule 204, SCACR. “Certification is normally appropriate where the case involves an issue of significant public interest or a legal

² That statute provides that “[a]ll contracts of insurance on property, lives, or interests in South Carolina are considered to be *made* in the [s]tate and . . . subject to the laws of this [s]tate.” § 38-61-10 (emphasis added). The statute never states that the contracts are to be considered assets *located in* South Carolina.

³ That statute provides that the circuit court may appoint a receiver “[i]n such other cases as are provided by law or may be *in accordance with the existing practice*, except as otherwise provided in this Code.” § 15-65-10(5) (emphasis added).

principle of major importance.” *Id.* “The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.”⁴ *Id.*

ARGUMENT

I. Whether the circuit court can assert jurisdiction over ACL’s assets and property outside of South Carolina is a matter of significant public interest and a legal principle of major importance.

“[T]he jurisdiction of a state is restricted to its own territorial limits.” *Ex parte First Pennsylvania Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966). Consequently, “[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.” *Pollock v. Carolina Interstate B. & L. Assn.*, 48 S.C. 65, 25 S.E. 977, 980 (1896) (quoting Gluck & B. Rec. p. 3). “[C]ourts of equity cannot acquire extraterritorial jurisdiction over property by appointing receivers.” *Id.* (quoting 20 Am. & Eng. Enc. Law, 65, 66).

Indeed, our receivership statute references these jurisdictional limits, specifically limiting receiverships over foreign companies to “property within the state.” S.C. Code Ann. § 15-65-10(4). Nevertheless, the circuit court ruled that the statute’s reference to “‘property within this state’ [wa]s not a limitation on the Receiver’s authority in this case.” (Receiver Order p. 4.) The circuit court reasoned that ACL’s “insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver” under § 38-61-10.

Section 38-61-10 in its entirety provides:

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

⁴ Accordingly, this Court would also have jurisdiction over the appealed circuit court order holding ACL in contempt and striking its pleadings as a sanction if this Court grant ACL’s Motion for Certification.

S.C. Code Ann § 38-61-10 (emphases added).

To support its unique and unprecedented interpretation of § 38-61-10, the circuit court cited *Sangamo Weston, Inc. v. Nat'l Sur. Corp.*, 307 S.C. 143, 414 S.E.2d 127 (1992). In *Sangamo*, the defendant operated a facility located in South Carolina that allegedly discharged a hazardous substance into the surrounding area. *Id.* at 146, 414 S.E.2d at 129. The South Carolina Supreme Court interpreted § 38-61-10 and determined that “South Carolina substantive law govern[ed] the dispute” even though the insurance contracts were executed outside of South Carolina and between parties that were not citizens of South Carolina. *Id.* at 149, 414 S.E.2d at 130. However, that dispute revolved around whether South Carolina or another jurisdiction’s law would apply. Indeed, our Supreme Court ruled that when § 38-61-10 applies “it governs as South Carolina’s *rule of conflicts.*” *Id.* at 147, 414 S.E.2d at 130 (emphasis added).

The circuit court erred in applying § 38-61-10 to construe that ACL has property in South Carolina. Section 38-61-10 is merely a choice of law provision. Section 38-61-10 has never been used by courts to unilaterally declare insurance assets as property located in South Carolina. Courts have routinely recognized that section 38-61-10 merely replaces the common law rule of *lex loci contractus* for insurance contracts in the conflict of laws context. *See Sangamo*, 307 S.C. at 147, 414 S.E.2d at 130 (“Where this statute applies it governs as South Carolina’s *rule of conflicts.*” (emphasis added)); *Hartsock v. Am. Auto. Ins. Co.*, 788 F. Supp. 2d 447, 450 (D.S.C. 2011) (“Historically, in insurance coverage disputes, South Carolina courts have followed the doctrine of *lex loci contractus*, and applied the law of the state where the contract was formed. However, this rule was modified by a statute enacted in 1947 and now codified at South Carolina Code section 38-61-10.” (internal citation omitted) (citing *Sangamo*, 307 S.C. 143, 414 S.E.2d 127)); *Okatie Hotel Grp., LLC v. Amerisure Ins. Co.*, No. CIV.A. 2:04-2212-23, 2006 WL 91577,

at *3 (D.S.C. Jan. 13, 2006) (“South Carolina choice of law encompasses both the traditional *lex loci contractus* doctrine and S.C. Code Ann. § 38-61-10. Historically, South Carolina courts followed the rule of *lex loci contractus* and applied the law of the state where the insurance contract was formed. However, a statute enacted in South Carolina in 1947, S.C. Code Ann. § 38-61-10, modified the traditional rule of *lex loci contractus*.” (internal citations omitted)).

Section 38-61-10 has been applied solely in the context of conflicts of law cases; there is no reported case in which § 38-61-10 has been applied along with the receivership statute to appoint a receiver over a foreign company’s assets that are not located in South Carolina. The lack of published authority also contradicts the circuit court’s application of § 15-65-10(5), which provides that the circuit court may appoint a receiver “[i]n such other cases as are provided by law or may be *in accordance with the existing practice*, except as otherwise provided in this Code.” § 15-65-10(5) (emphasis added).

The lack of authority speaks for itself: it is not in accordance with existing practice to appoint a receiver over a foreign company’s assets that are not in South Carolina. In fact, appellate courts have reversed circuit courts for appointing receivers over out-of-state property. *See, e.g., Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver over a foreign company because “there [wa]s a total failure of any proof that it ha[d] property in this state”).

Due to the vast number of parties involved in the asbestos court docket and the fundamental issues of jurisdiction involved, this is a matter of significant public interest and a legal principle of major importance. Accordingly, we ask this Court to review the circuit court’s ruling that section 38-61-10 is a hook that the circuit court can tie to the receivership statute to reel in foreign companies without assets in the state.

CONCLUSION

As evidenced by the above background, this appeal addresses an issue of significant public interest and a legal principle of major importance: whether the circuit court can appoint a receiver over a foreign company's assets and property that have never been in South Carolina. Accordingly, ACL moves this Court to certify this case for review before it is determined by the Court of Appeals.

Respectfully submitted,

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Dated: September 24, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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Court of Appeals Appellate Case No. 2023-001461
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John A. Tibbs and Margaret B. Tibbs,

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Of which Asbestos Corporation Limited is

Appellant.

PROOF OF SERVICE

I, Stephen L. Brown, of Clement Rivers, LLP, attorneys for Appellant, hereby certify that **APPELLANT ASBESTOS CORPORATION LIMITED'S MOTION FOR CERTIFICATION PURSUANT TO RULE 204(b), SCACR** was served on all other parties to this appeal on September 24, 2024, via email (see attached) to their following counsel of record:

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I also certify that **APPELLANT ASBESTOS CORPORATION LIMITED'S MOTION FOR CERTIFICATION PURSUANT TO RULE 204(b), SCACR and PROOF OF SERVICE** were filed with the South Carolina Court of Appeals on September 24, 2024, via email (see attached) to ctappfilings@sccourts.org.

Respectfully submitted,
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September 24, 2024

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Subject: Tibbs v. Asbestos Corporation Limited; Ct. App. Case No. 2023-001461
Date: Tuesday, September 24, 2024 4:08:16 PM
Attachments: [Motion for Certification 204\(b\).pdf](#)
[image001.png](#)

Enclosed please find Appellant Asbestos Corporation Limited's Motion for Certification Pursuant to Rule 204(b), SCACR, for service upon you in the above-referenced matter.

Thank you,

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