

Reply To: Columbia

March 4, 2025

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S.C. SUPREME COURT

Via Email Only – supctfilings@sccourts.org

The Honorable Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RE: *John A. Tibbs v. Asbestos Corporation Limited and Donna B. Welch v. Atlas Turner, Inc.*
Appellate Case Nos. 2023-001461 and 2023-001096

Dear Ms. Howard:

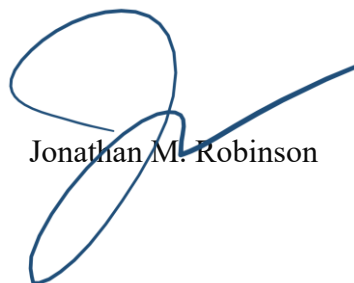
The Receiver is in receipt of Appellants' February 21, 2025 response to the Court's inquiry indicating it does not believe there is a work around for the Québec Business Concerns Records Act ("QBCRA")¹ and supplemental citations letter. The Receiver notes the cases outlined in the supplemental citations letter are addressed in the Receiver's Reply to Amicus Brief at pages 7–8 in the above-referenced appeals and Return to the Petition for Writ of Prohibition at page 40 in Appellate Case No. 2024-001959.

The Receiver is also in receipt of Amicus CLMI's letter submitting additional arguments seeking to "correct" statements made during oral argument. The Receiver objects to CLMI's submission of additional arguments and notes this Court's previous denial of CLMI's request to participate in oral arguments. CLMI's characterization of Appellants' agreements with its insurers are inconsistent with the record and with Appellants' own characterization of the agreements as "buyback" agreements. *See* Oral Argument at 1:38:02.

The Receiver sincerely appreciates this Court's time and careful consideration of this matter. In the event the Court desires any additional information, we stand ready to respond. Thank you for consideration of this matter.

Sincerely,

¹ Appellant's counsel conceded at oral argument that the QBCRA is not before the Court in the appeal. *See* Oral Argument at 0:7:33 and 1:36:00.



Jonathan M. Robinson

JMR/dlf

cc: All counsel of record via email only

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Appellate Case Nos. 2023-001461 and 2023-001096

Dear Ms. Howard:

Pursuant to Rule 208(b)(7) of the South Carolina Appellate Court Rules, Respondent Peter D. Protopapas, Duly Appointed Receiver for Asbestos Corporation Limited and Atlas Turner, Inc. (“the Receiver”) is writing to notify the Court of authorities pertinent to the above-referenced appeals. The Receiver notifies the Court of the following enclosed authorities:

1. *Cape Plc, et al, v. Anglo American, et al*, No. 3:24-cv-03771-MGL, ECF 75, (D.S.C Aug. 13, 2024) (granting remand and finding the state court’s exclusive jurisdiction over the state court-appointed Receiver pursuant to S.C. Code Ann. § 15-65-10). This order is relevant to the second issue in these appeals concerning the appointment of the Receiver, which is discussed on pages 15–20 of the Receiver’s brief and was the subject of several of the Court’s questions at oral argument.
2. *Pipe & Boiler Insulation, Inc. v. Cont’l Ins. Co. et al.*, No. 3:21-cv-03033-SAL, ECF No. 153, at 4–9 (D.S.C. Mar. 9, 2023) (remanding receivership matter because “the *Barton* doctrine prevents Defendants from removing this matter, filed by a Receiver, to federal court,” while also considering judicial economy in light of the fact that any “settlement agreement is not final until the *Receivership Court* approves the settlement” (emphasis added)). This order is relevant to the second issue in these appeals concerning the appointment of the Receiver, which is discussed on pages 15–20 of the Receiver’s brief and was the subject of several of the Court’s questions at oral argument.

3. *Protopapas v. Zurich Am. Ins. Co. et al.*, No. 3:21-cv-04086-DCC, ECF No. 180, at 4–6, 10 (D.S.C. Feb. 24, 2023) (remanding receivership case because “*Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver,” such that allowing removal “would directly interfere with the exclusive jurisdiction of the receivership court over this dispute”). This order is relevant to the second issue in these appeals concerning the appointment of the Receiver, which is discussed on pages 15–20 of the Receiver’s brief and was the subject of several of the Court’s questions at oral argument.
4. *Protopapas v. Travelers Casualty & Surety Company*, 94 F.4th 351 (4th Cir. 2024) (“Exercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an ‘arm’ or ‘executive’ of the state-receivership court, would infringe on the state court’s control over the receivership assets — its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction, and indeed we have confirmed as much.”). This opinion is relevant to the second issue in these appeals concerning the appointment of the Receiver, which is discussed on pages 15–20 of the Receiver’s brief and was the subject of several of the Court’s questions at oral argument.
5. *McIntire v. China Media Express Holdings, Inc.*, 113 F.Supp.3d 769, 773–74 (S.D.N.Y. 2015) (granting a receiver’s motion to enjoin non-party insurers from proceeding with the Demand for Arbitration in Hong Kong because the arbitration action involved the very assets that the receiver was appointed to marshal, including pursuing claims against the company’s former insurers). This opinion is relevant to the second issue in these appeals concerning the appointment of the Receiver, which is discussed on pages 15–20 of the Receiver’s brief and was the subject of several of the Court’s questions at oral argument.
6. *In re MF Global Holdings Ltd.*, 562 B.R. 866 (Bankr. S.D.N.Y. 2017) (noting that “the *Barton* Doctrine extends to bankruptcy as well as receivership, and lower courts have applied it to declaratory judgment actions, as well as suits seeking damages” and holding Bermuda insurers, in bringing proceedings in Bermuda to compel plan administrator and assignee to arbitrate any policy claims in Bermuda, without first obtaining leave from bankruptcy court, violated *Barton* doctrine). This opinion is relevant to the second issue in these appeals concerning the appointment of the Receiver, which is discussed on pages 15–20 of the Receiver’s brief and was the subject of several of the Court’s questions at oral argument.

7. Order Granting Temporary Injunction And Appointing Co-Receivers And Co-Receivers' Counsel, *Renee S. Beach, as Personal Representative of the Estate of Mallory Beach, Plaintiff, v. Gregory M. Parker, Inc. a/k/a Parker's Corporation d/b/a Parkers 55, Richard Alexander Murdaugh, and Richard Alexander Murdaugh, Jr., C/A* No. 2019-CP-25-00111 (filed Nov. 4, 2021) (authorizing a prejudgment appointment of Receiver "pursuant to S.C. Code §15-65-10, the Court's equitable powers, and general principles of fraud and deceit under South Carolina law" and ordering co-receivers to reasonably investigate the existence of all insurance coverages potentially available to Alex Murdaugh and Buster Murdaugh in receivership). This order is relevant to the second issue in these appeals concerning the appointment of the Receiver, which is discussed on pages 15–20 of the Receiver's brief and was the subject of several of the Court's questions at oral argument.

Sincerely,


Jonathan M. Robinson

Enclosures

JMR/dlf

cc: All counsel of record via email only