



NATIONAL ASBESTOS LITIGATION CONFERENCE

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The Significance of Dissolution and Receiverships



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Receiverships in the Asbestos Context

S.C. Code Ann. § 15-65-10

Appointment of Receiver

- ▶ A Receiver may be appointed by a judge of the circuit court, either in or out of court:
 - ▶ (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;
 - ▶ (2) After judgment, to carry the judgment into effect;
 - ▶ (3) After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;
 - ▶ (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
 - ▶ (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

South Carolina Rules of Civil Procedure

Rule 66. Receivers

- ▶ **(a) Action Where Receiver Appointed.** An action in which a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the laws of this State. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.
- ▶ **(b) Powers of Receiver.** In addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor where it is necessary or proper for him to do so.

Welch v. Advance Auto Parts, Inc.,
445 S.C. 640 (2025)

- ▶ Court Struck Atlas Turner's answer following contempt order because Atlas refused repeated orders of the Court.
- ▶ Atlas was placed into receivership after the answer was struck under S.C. Code Ann. Section 15-65-10(5)
- ▶ Interprets S.C. Code Ann. Section 15-65-10(5) applying to "such other cases as are provided for at law or may be in accordance with existing judgment to a debtor's property."
- ▶ Confirms appointment of receiver over the administration of "insurance assets"
- ▶ Concludes that those intangible assets are property located within the state.
- ▶ Confirms that a court may direct a defendant over which it has jurisdiction to bring the assets to the state.
- ▶ Importantly *Welch* does not address receiver's appointed under section (4) which deals with insolvent debtors.

Case Law Surrounding Receiverships

No. 25- _____

IN THE
Supreme Court of the United States

ATLAS TURNER, INC.,

Petitioner,

v.

DONNA B. WELCH, individually and as Personal Representative of the Estate of Melvin G. Welch, and
PETER D. PROTOPAPAS, in his capacity as Receiver for
Atlas Turner, Inc.,

Respondents.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of South Carolina**

PETITION FOR A WRIT OF CERTIORARI

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Case Law
Surrounding
Receiverships

- ▶ *Virginia-Carolina Chemical Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909)
- ▶ *Regenstein v. Pearlstein*, 30 S.C. 192 (1889)
- ▶ *McClary-Broadway Co. v. Dingle*, 107 S.C. 384, 92 S.E. 1051 (1917)
- ▶ *First Carolinas Joint Stock Land Bank v. Knotts*, 191 S.C. 384, 1 S.E.2d 797 (1939)
 - ▶ The appointment of a receiver was justified where a mortgagee bank, in a creditors' suit attacking judgments obtained by debtor's sister, alleged fraudulent conveyances on the part of debtor defendant to his sister.
- ▶ *Whilden v. Chapman*, 80 S.C. 84, 61 S.E. 249 (1908)
 - ▶ Good cause existed for the appointment of a receiver in an action between two partners in a partnership not a corporation when one fraudulently deprived another of assets.
- ▶ *Harman v. Wagner*, 33 S.C. 487, 12 S.E. 98 (1890)
 - ▶ The appointment of a receiver upon a showing by the creditors that the executor was wasting or mismanaging assets was proper, regardless that the creditors were not entitled to the possession of such assets.
- ▶ *Wilson v. Jonathan W. Brooks, County of Richland*, case no: 2013-CP-40-01316
 - ▶ Receiver is necessary for the protection of assets and property acquired with investor funds. Defendants were essentially operating a Ponzi scheme, which required careful consideration of the repayment of creditors.

Case Law Surrounding Receiverships

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 24-2210 & 24-2211

In re: WHITTAKER CLARK & DANIELS INC,

Debtor

PETER PROTOPAPAS,

Appellant in No. 24-2210

OFFICIAL COMMITTEE OF TALC CLAIMANTS

Appellant in No. 24-2211

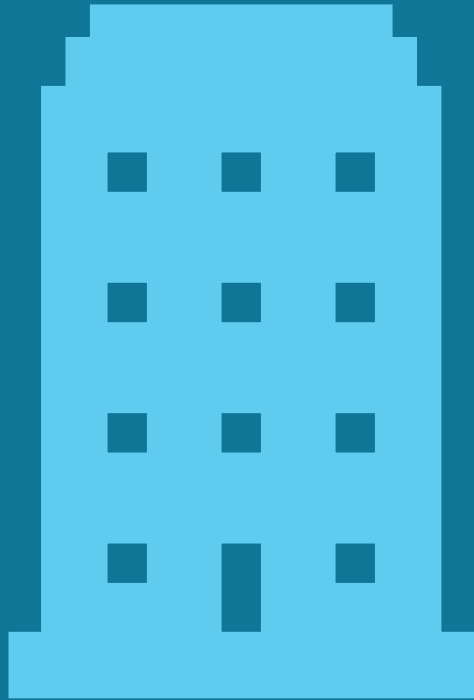
On Appeal from the United States District Court
for the District of New Jersey
(D.C. Nos. 3:23-cv-04151; 3:23-cv-04156)
District Judge: Honorable Zahid N. Quraishi

Case Law Surrounding Receiverships

Case Law Surrounding Receiverships

In Re Whittaker Clark & Daniels, Inc.

- ▶ *Found that the receivership appointment order did not displace the board of directors*
- ▶ *Suggested ancillary receivership in New Jersey would have been appropriate*
 - ▶ *But consider timing*
- ▶ *Does not conclude that receiverships over non-domestic entity assets are inappropriate*
- ▶ *Addresses company's abilities to negotiate insider transactions to deprive claimants of recovery is ok*



Dissolution of the Company



GRANTED IN PART

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE FLETCHER)
CONSTRUCTION COMPANY OF)
NORTH AMERICA, a dissolved) C.A. No. 2023-1038-MTZ
Delaware corporation)

**[PROPOSED] ORDER REGARDING PETITIONERS'
SUBMISSION OF TWO CANDIDATES FOR CONSIDERATION
FOR APPOINTMENT AS RECEIVER OVER FLETCHER
CONSTRUCTION COMPANY OF NORTH AMERICA**

WHEREAS, on October 16, 2023, Petitioners Bonnie Kotzerke, individually as the surviving spouse of Donald Kotzerke, deceased, and Debra MacVittie, individually and as the Executor of the Estate of Donald Kotzerke (“Petitioners”), filed their Petition for Appointment of a Receiver Pursuant to 8 *Del. C.* § 279 (“Petition”) in the above-captioned action and the Petition having been considered

- Appointed Dennis Lynch as Receiver
- Fletcher Construction Company of North America is the successor to Wright Schuchart
- Wright Schuchart was an enormous construction company on the west coast that built paper plants and power plants
- Huge amounts of Insurance



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE THE WALWORTH)
COMPANY) C.A. No. 2024-1291-JTL
)

**ORDER GRANTING PETITION AND APPOINTING
RECEIVER FOR THE WALWORTH COMPANY**

WHEREAS, this matter having come before the Court on Petitioners' Verified
Petition for Appointment of a Receiver (the "Petition");

WHEREAS, The Walworth Company ("Walworth") is an entity declared void
for failure to pay franchise taxes and for failure to appoint a registered agent;

WHEREAS, Petitioners have shown good cause for the appointment of a
receiver.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Petition is
GRANTED. IT IS HEREBY FURTHER ORDERED as follows:

1. Dennis Lynch, Esq. (the "Receiver") is appointed as the Receiver for
The Walworth Company ("Walworth") with the powers and duties specified in this
Order.
2. The Receiver shall have full authority to act on behalf of Walworth as
provided in this Order.
3. The Receiver's powers include the authority to fully administer all
assets of Walworth, accept service on behalf of Walworth, provide notice to

- Appointed Dennis Lynch as Receiver
- Walworth was a valve manufacturer
- Substantial insurance assets

IN RE REINZ WISCONSIN GASKET, LLC, a
cancelled Delaware limited liability company

C.A. No. 2022-0859-MTZ

|
Date Submitted: December 19, 2022

|
Date Decided: March 20, 2023

Attorneys and Law Firms

K. Tyler O'Connell, R. Eric Hacker, Samuel E. Bashman,
MORRIS JAMES LLP, Wilmington, Delaware; Charles W.
Branham, III, Todd Barnes, DEAN OMAR BRANHAM
SHIRLEY, LLP, Dallas, Texas, Attorneys for Petitioner.

Kelly E. Farnan, Blake Rohrbacher, Jordan L. Cramer, Mari
Boyle, RICHARDS, LAYTON & FINGER, P.A.,
Wilmington, Delaware, Attorneys for Respondent.

I conclude the petitioner has standing under *6 Del. C. § 18-805* to demonstrate good cause that the Court should appoint a receiver. I also conclude that she has demonstrated good cause by showing it is reasonably likely that the company had assets when it dissolved, which it failed to set aside for the pending claims against it, and thus dissolved in violation

Court of Chancery of Delaware.

IN RE REINZ WISCONSIN GASKET, LLC,

Civil Action No. 2022-0859-MTZ

|
August 3, 2023

*3 DCo sat on the bench and watched its team lose, even as I intimated DCo should perhaps suit up. In my March 20, 2023, post-trial opinion, which concluded a receiver should be appointed, I observed it was a puzzling thing for counsel to represent a cancelled company in opposing the imposition of a receiver and nullification of its cancellation.¹⁹ I recognized DCo's potential interest as the Company's sole member.²⁰ I observed that in other similar cases, the cancelled entity's members had appeared.²¹ I also directed that the “receiver may also investigate how this litigation has been funded.”²² These observations did not spur DCo to intervene.

Court of Chancery of Delaware.

IN RE REINZ WISCONSIN GASKET, LLC,

Civil Action No. 2022-0859-MTZ

|
August 3, 2023

DCo filed a motion to intervene (the “Motion”) and its “Answer and Affirmative Defenses in Intervention to the Verified Petition for Appointment of a Receiver Pursuant to 6 *Del. C. § 18-805.*”² DCo seeks to intervene as of right and, in the alternative, permissively, under *Court of Chancery Rule 24.*³ DCo seeks this relief in hopes that it may weigh in on a receiver before the Court selects one because “[t]he candidates proposed by Petitioner are, in fact, not appropriate choices to serve as receiver in this matter, but there is currently no party to this action able to explain why.”⁴ On June 21, Petitioner opposed the Motion, and DCo replied on June 26.⁵ DCo's motion to intervene is denied as untimely.

Court of Chancery of Delaware.

IN RE REINZ WISCONSIN GASKET, LLC

Civil Action No. 2022-0859-MTZ

|
May 8, 2023

relief sought. Counsel had entered their appearance on behalf of the defunct RWG. In my post-trial opinion, which concluded a receiver should be appointed, I observed it was a puzzling thing for counsel to represent a cancelled company in opposing the imposition of a receiver and nullification of its cancellation.¹ Petitioner followed with her Motion to Determine Proper Respondent and Counsel (the “Motion”), which was briefed and taken under advisement on April 26, 2023.² The Motion is granted in part: Counsel's purported representation of a defunct limited liability company is not only puzzling, but impossible.

Where did Reinz Wisconsin Gasket Sell?

- ▶ Chrysler
- ▶ Aqua Chem
- ▶ Bendix
- ▶ Belloit
- ▶ Briggs and Stratton
- ▶ Carver Pump
- ▶ Case
- ▶ Caterpillar
- ▶ Eaton
- ▶ Cummins
- ▶ Club Cadet
- ▶ General Motors
- ▶ John Deere
- ▶ Detroit Diesel
- ▶ DeZurik
- ▶ Emerson Electric
- ▶ FMC
- ▶ Federal Mogul
- ▶ Dana
- ▶ Ford
- ▶ General Electric
- ▶ Gorman Rupp
- ▶ B.F. Goodrich
- ▶ Harley Davidson
- ▶ Honeywell
- ▶ Hyster
- ▶ Navistar
- ▶ and lots more....

Finding Chronic Legacy Policies

The Barton Doctrine

Who is the Client?

How Can the
Defunct Company
Consent?

Model Rule of Professional Conduct 1.7

Rule 1.7 pertains to conflicts of interest and states:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

Model Rule of Professional Conduct 1.8(f)

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
- (3) Information relating to representation of a client is protected as required by rule 1.6.

Representing Receiver When Underlying Client is a Defunct Company

- Maintain Tripartite Relationship;
 - Client (Receiver)
 - Insurer
 - Me / Firm
- Duty of Loyalty to Client (Receiver);
 - Demand more than insurer engagement letter;
- Full disclosure / communication;
- Defend the tort case;

Representing Receiver When Underlying Client is a Active Company

POWERS OF THE RECEIVER

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of ACL. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Asbestos Corporation, Ltd. and any subsidiaries, accept service on behalf of ACL, engage counsel on behalf of ACL, to assume control of the defense of asbestos claims made against ACL in the United States, and take any and all steps necessary to protect the interests of ACL whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of ACL as well as any claims related to the actions or failure to act of ACL insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of ACL against which the ACL may have claims.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to: 1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the

Representing Receiver When Underlying Client is a Active Company

- Client is still Receiver;
- Receiver is officer of Court;
- Attempt cooperation of active entity;
- Remember your role when you are being put in the middle of coverage or attempts to dissolve receivership;
- Defend the tort case;

Court of Chancery of Delaware.

IN RE REINZ WISCONSIN GASKET, LLC

Civil Action No. 2022-0859-MTZ

|
May 8, 2023

***4 RWG has been cancelled and without a decisionmaker throughout Counsel's purported representation in this action. I must conclude that Counsel have never actually represented RWG before this Court. Having shared my view on the law, I leave it to Counsel to withdraw their purported appearances.**

Just as RWG's cancellation precluded it from entering into an attorney-client relationship, RWG as a defunct entity cannot hold an attorney-client privilege.³⁶ The District Court observed

120 N.C.App. 529

Court of Appeals of North Carolina.

Daphne JOHNSON, Plaintiff–Appellant,

v.

AMETHYST CORPORATION and Amethyst
Charlotte, Inc., d/b/a Amethyst Hospital, and John
Joseph Bartolotta Defendant–Appellee.

No. COA94–1334.

|

Nov. 7, 1995.

No person has the right to appear as another's attorney without the authority to do so, granted by the party for which he is appearing. *Pueblo of Santa Rosa v. Fall*, 273 U.S. 315, 319, 47 S.Ct. 361, 362, 71 L.Ed. 658 (1927). North Carolina law has long recognized that an attorney-client relationship is based upon principles of agency. See *State v. Ali*, 329 N.C. 394, 403, 407 S.E.2d 183, 189 (1991). Two factors *533 are essential in establishing an agency relationship: (1) The agent must be authorized to act for the principal; and (2) The principal must exercise control over the agent. *Vaughn v. North Carolina Dep't of Human Resources*, 37 N.C.App. 86, 91, 245 S.E.2d 892, 895 (1978), *aff'd* 296 N.C. 683, 252 S.E.2d 792 (1979).

Illinois

Maryland
Casualty Co v.
Peppers, 355
N.E.2d 24, 30-31
(Ill. 1976)

Dual representation is permitted if the insured either waives the conflict after full disclosure or the insurer waives its defense of noncoverage. Once a conflict arises, the insurer is divested of its right to control the defense

California

(e) The insured may waive its right to select independent counsel by signing the following statement: “I have been advised and informed of my right to select independent counsel to represent me in this lawsuit. I have considered this matter fully and freely waive my right to select independent counsel at this time. I authorize my insurer to select a defense attorney to represent me in this lawsuit.”

Cal. Civ. Code § 2860
(enacted 1987; amended
1988)

Indiana

When a conflict of interest arises, the insurer must either provide an independent attorney to represent the insured or pay for the cost of defense incurred by the insured hiring an attorney of his or her choice. The insured must be informed of the nature of the conflict and given the right either to accept an independent attorney selected by the insurer or to select an attorney for himself or herself. *Sitek v. J. Cerna Trucking, Inc.*, 2009 WL 624345, 7 (N.D. Ind. 2009).

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Peter D. Protopapas as Receiver for Covil Corporation,

Plaintiff,

v.

Wall, Templeton & Haldrup, P.A., et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No: 2019-CP-40-02285

ORDER APPROVING COVIL CORPORATION SETTLEMENT WITH WALL TEMPLETON & HALDRUP, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Ann Finch, Individually and as Executor of the Estate of Franklin Finch,

Plaintiff,

v.

United States Fidelity and Guaranty Company, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2019-CP-40-03003

ORDER APPROVING COVIL CORPORATION SETTLEMENT WITH WALL TEMPLETON & HALDRUP, P.A.

This matter comes before the Court on joint motions to approve settlement filed by Peter D. Protopapas as Receiver of Covil Corporation (“Covil”), an administratively revoked South Carolina Company, and Wall Templeton Haldrup, PA (“WTH”), a South Carolina law firm. The has been named as a defendant in numerous asbestos-related bodily injury actions. In April of 2018, Covil’s liability insurance carriers retained WTH to represent Covil in all asbestos bodily injury suits in North and South Carolina. Among the cases where WTH represented Covil were *Hill v. Covil Corporation*, CA NO. 2018–CP-40-04680 (Richland County), *Taylor v. Covil Corporation*, CA NO. 2018-CP-40-04940 (Richland County), and *Finch v. Covil Corporation*, CA No. 1:16-CV-01077 (MDNC).

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Peter D. Protopapas as Receiver for Covil Corporation,

Plaintiff,

v.

Wall, Templeton & Haldrup, P.A., et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No: 2019-CP-40-02285

ORDER APPROVING COVIL CORPORATION SETTLEMENT WITH WALL TEMPLETON & HALDRUP, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Ann Finch, Individually and as Executor of the Estate of Franklin Finch,

Plaintiff,

v.

United States Fidelity and Guaranty Company, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2019-CP-40-03003

ORDER APPROVING COVIL CORPORATION SETTLEMENT WITH WALL TEMPLETON & HALDRUP, P.A.

The Receiver and WTH have entered into a final comprehensive Settlement Agreement which resolves all disputes between WTH and Covil. The Settlement Agreement provides that WTH’s professional liability insurer pay **Five Million Dollars (\$5,000,000) to the Covil Qualified Settlement Fund (“Covil QSF”)**³ if the settlement is approved, if that order of approval is upheld

Questions?