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**Nov 13 2023**

**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 Joan H. Toal  
Acting Circuit Court Judge

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Appellate Case No. 2023-001461

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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 3 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 ..... Defendants,

of which

Asbestos Corporation Limited, is the ..... Appellant.

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**MOTION TO INTERVENE FOR LIMITED PURPOSE BY CHUBB INSURERS**

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Currently on appeal is an Order on Plaintiff's Motion to Appoint a Receiver, filed on September 8, 2023, in which the trial court appointed Peter D. Protopapas ("Receiver") as the receiver for Appellant, Asbestos Corporation Limited ("ACL"). After being appointed, the Receiver filed a third-party action against a number of insurance companies in a different case pending in the Court of Common Pleas for Richland County, *Ted Everette Mitchell v. 3M Company, et al. v. Century Indemnity Company, et al.*, Civil Action No. 2022-CP-40-02979 ("Mitchell"). Century Indemnity Company and Federal Insurance Company (collectively "Chubb Insurers") are third-party defendants in the action filed by the Receiver in *Mitchell*. Notably, the third-party action in *Mitchell* was filed after the appeal to this Court challenging the appointment of the Receiver.

While Rule 205, SCACR, divests the trial court of jurisdiction over all matters affected by the appeal to this Court, the Receiver has taken the contrary position that he can proceed with the third-party action and conduct extensive discovery against the Chubb Insurers and others even though the third-party action is directly affected by this appeal. By this motion, the Chubb Insurers seek to intervene in this appeal for the limited purposes of filing a motion to clarify and enforce Rule 205, SCACR.

"A party may move to intervene in an appeal or other appellate proceeding." Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (citing *Al-Shabazz v. State*, 338 S.C. 354, 361, 527 S.E.2d 742, 745 (1999)); *see also*, *Strickland v. Richland Cty. Legislative Delegation*, 440 S.C. 438 n.1, 892 S.E.2d 288 (2023) (granting petition to intervene by South Carolina Senate). While there are no prescribed standards for intervention in the South Carolina Appellate Court Rules, Rule 24 of the South Carolina Rules of Civil Procedure and the case law construing Rule 24 are instructive. "Generally, the rules of intervention should be liberally

construed where judicial economy will be promoted by declaring the rights of all affected parties." *Cooper v. S.C. Dep't of Soc. Servs.*, 428 S.C. 402, 411, 835 S.E.2d 516, 520 (2019) (citing *Ex Parte Gov't Emp.'s Ins. Co. v. Goethe*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007)). Pursuant to Rule 24, SCRCF, a party may intervene as of right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Further, a party may request permissive intervention pursuant to Rule 24 "when an applicant's claim or defense and the main action have a question of law or fact in common."

In the present case, the Chubb Insurers have asserted that the Receiver lacks standing to pursue the third-party action and to conduct discovery during the pendency of this appeal. Being named as a third-party defendant in *Mitchell* after this appeal was filed and being subjected to discovery by a party who may lack standing to pursue litigation against the Chubb Insurers confers upon the Chubb Insurers a substantial interest in the subject of this appeal. While the Chubb Insurers are not presently adverse to Appellant, Appellant is not a third-party defendant in *Mitchell* and cannot represent the Chubb Insurers' substantial interest in this appeal as it relates to the actions that the receiver is taking against the Chubb Insurers in *Mitchell*. Moreover, this appeal and the third-party action share a common core issue—the appropriateness of the Receiver's appointment—which is an issue that should be addressed by this Court before the Receiver is entitled to proceed with the third-party action in *Mitchell* in derogation of Rule 205, SCACR. As such, the Chubb Insurers meet the standards under Rule 24, SCRCF, for both interventions as of right and by permission.

Based on the foregoing, the Chubb Insurers respectfully request that they be permitted to intervene in this appeal for the limited purpose of seeking relief pursuant to the Chubb Insurers' Motion to Clarify and Enforce Rule 205 that has been filed concurrently with this motion. If permitted to intervene, the Chubb Insurers will proceed in a manner tailored to protecting their interests in this appeal and in a manner that does not does not prejudice Appellant or Respondent.

Respectfully submitted,

s/ Kevin K. Bell

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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 ..... Defendants,

of which

Asbestos Corporation Limited, is the ..... Appellant.

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**PROOF OF SERVICE**

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Pursuant to Rule 262(c)(3), SCACR, I certify that I have caused the **MOTION BY UNDERLYING THIRD-PARTY DEFENDANTS CENTURY INDEMNITY COMPANY AND FEDERAL INSURANCE COMPANY (CHUBB INSURERS) TO INTERVENE** to be served on the following counsel of record by AIS email at the following addresses:

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*Purported receiver for “insurance assets” of Asbestos Corporation Limited per Order being appealed*

s/ Kevin K. Bell  
\_\_\_\_\_  
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Columbia, South Carolina  
November 10, 2023

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**Subject:** 2023-001461 Tibbs v. Asbestos Corporation Limited appeal - Chubb Insurers Motion to Intervene and Motion to Clarify and Enforce Rule 205 with Appendix  
**Date:** Friday, November 10, 2023 4:52:44 PM  
**Attachments:** [image001.png](#)  
[Chubb Insurers" Motion to Intervene.pdf](#)  
[Proof of Service - Chubb Insurers Motion to Intervene.pdf](#)  
[Chubb Insurers" Motion to Clarify and Enforce Rule 205.pdf](#)  
[Chubb Insurers" Appendix.pdf](#)  
[Proof of Service - Chubb Insurers Motion to Clarify and Enforce Rule 205 with Appendix.pdf](#)

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Attached for service upon you please find Century Indemnity Company and Federal Insurance Company's (Chubb Insurers') Motion to Intervene and Motion to Clarify and Enforce Rule 205 with Appendix which are being filed with the Court of Appeals today along with Proofs of Service.

A copy of this email will be filed with the Proofs of Service.

Thank you.

Toni Hawkins



**TONI HAWKINS** PARALEGAL

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