

RECEIVED

Mar 25 2024

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  
Jean Hoefer Toal, Circuit Court Judge

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Appellate Case Nos. 2024-000342; 2024-000348  
Circuit Court Case Nos. 2022-CP-40-05543 and 2023-CP-40-03108

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Michael David Link and Sandra Strickland Link,

Respondents,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; AT&T Corp.; Atlas Turner Inc.; Bahnson, Inc.; BASF Catalysts LLC; BASF Corporation; Beatty Investments, Inc.; Bechtel Corporation; Bellsouth, LLC; Bellsouth Telecommunications, LLC; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Heat & Frost Insulation Company, Inc.; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; J. & L. Insulation, Inc.; K-MAC Services, Inc.; Kohler Co.; Metropolitan Life Insurance Company; Michelin Corporation; Michelin North America, Inc.; Milliken & Company; Nokia of America Corporation; Occidental Chemical Corporation; The Okonite Company, Inc.; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Prysmian Cables and Systems USA, LLC; Raytheon Technologies Corporation; REDCO Corporation; Riley Power Inc.; Rockwell Automation Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; SPX Cooling Technologies, LLC; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company, Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; Whittaker, Clark & Daniels, Inc.; The

William Powell Company; Wind Up, LTD.; York International Corporation;  
Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited and Atlas Turner, Inc. are

Appellants.

AND

Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley  
Potter, deceased,

Respondents,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong  
International, Inc.; Asbestos Corporation Limited; Atlas Turner Inc.; Bahnson, Inc.;  
Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brenntag  
North America, Inc.; Brenntag Specialties, LLC; Canvas CT, LLC; Carboline  
Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC;  
Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation;  
Eaton Corporation; Emerson Electric Co.; Ericsson Inc.; Fisher Controls  
International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors  
International; Fluor Constructors International, Inc.; Fluor Daniel Services  
Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable  
Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps,  
Incorporated; Goulds Pumps LLC; Graybar Electric Company, Inc.; Great Barrier  
Insulation Co.; Grinnell LLC; Henry Pratt Company, LLC; Howden North  
America Inc.; ITT LLC; K-MAC Services, Inc.; Metropolitan Life Insurance  
Company; Occidental Chemical Corporation; Paramount Global; PECW Holding  
Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco  
Corporation; Riley Power Inc.; Rockwell Automation, Inc.; R.T. Vanderbilt  
Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International  
Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures  
Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco,  
Inc.; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr  
Davis Company of S.C., Inc.; Thermo Electric Company Inc.; Union Carbide  
Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate  
Company LLC; The William Powell Company; York International Corporation;  
Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited and Atlas Turner, Inc. are

Appellants.

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**APPELLANTS' MEMORANDUM ON APPEALABILITY**

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*Attorneys for Appellants Asbestos*

*Corporation Limited and Atlas Turner, Inc.*

Appellants, Asbestos Corporation Limited (“ACL”) and Atlas Turner, Inc. (“Atlas”), submit this memorandum on the appealability of the circuit court’s order (“Subject Order”) challenged in this interlocutory appeal. As explained below, the Subject Order is properly before this Court for appellate review pursuant to section 14-3-330 of the South Carolina Code (2024).

The Subject Order is immediately appealable under section 14-3-330(2)(a) of the South Carolina Code because it denies Appellants their choice of counsel which affects “a substantial right . . . [that] in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” § 14-3-330(2)(a). Alternatively, the Subject Order is immediately appealable under section 14-3-330(4) of the South Carolina Code because it is an “interlocutory order . . . granting, continuing, [or] modifying . . . the appointment of a receiver.” § 14-3-330(4).

### **FACTS/PROCEDURAL HISTORY**

Appellants are two active, yet separate Canadian companies headquartered in the province of Quebec. Respondents, Michael David Link and Sandra Strickland Link (2022-CP-40-05543) (collectively, “the Links”), and Respondents Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley Potter, deceased (2023-CP-40-03108) (“Potter”) sued Appellants and many other defendants for alleged exposure to asbestos. In two separate asbestos exposure cases

that also involved Appellants as defendants, the circuit court issued two orders that appointed Mr. Peter Protopapas as receiver (“Receiver”) over ACL and Atlas (respectively, the “ACL Receiver Order” and “Atlas Receiver Order”).<sup>1</sup>

Mr. Protopapas filed a notice of termination of Appellants’ counsel of choice, Clement Rivers, LLP (“Clement Rivers”) on February 23, 2024<sup>2</sup>. To prevent an immediately appealable order, the circuit court issued the Subject Order which purports to deny the Receiver’s motion to terminate Clement Rivers. (Subject Order p. 6 (“If a disagreement arises between [Clement Rivers] and the Receiver on matters related to the defense of asbestos matters or the management of insurance assets, the Receiver’s directives shall prevail. [Clement Rivers] is hereby ORDERED to comply with the Receiver’s directives in these situations.”).) In essence, the Subject Order divested ACL and Atlas Turner of the civil counsel which it selected. The “weighing” approach ordered by the Circuit Court was simply a method to avoid an appeal which is mandated by South Carolina law.

In fact, the Subject Order effectively granted the Receiver’s motion to terminate Clement Rivers because it purportedly vests the Receiver with the ultimate power to control of Appellants’ asbestos litigation. Alternatively, the Subject Order reaffirmed that the Receiver is in control of ACL’s asbestos litigation and modified

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<sup>1</sup> Appellants appealed both those orders, and they are pending with this Court.

<sup>2</sup> Mr. Protopapas also asserts he terminated Clement Rivers.

the Atlas Receiver Order to grant the Receiver control of Atlas’s asbestos litigation as well. Both are inconsistent with South Carolina law as determined by our Supreme Court.

The issue at hand is controlled by *Hagood v. Sommerville*, 362 S.C. 191, 197-98, 607 S.E.2d 707, 710 (2005) (“The right to be represented by an attorney of one[’]s choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Moreover, the right to be represented by one[’]s preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right.”) The same holds equally true in this appeal.

### **ARGUMENT/ANALYSIS**

“The right of appeal arises from and is controlled by statutory law.” *Hagood*, 362 S.C. at 194, 607 S.E.2d at 708. “The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330 [2024].” *Id.* at 195, 607 S.E.2d at 708. “An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Id.*

**I. The Subject Order is immediately appealable under section 14-3-330(2)(a).**

Under section 14-3-330(2)(a), an “order affecting a substantial right” is immediately appealable “when such [an] order . . . in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” § 14-3-330(2)(a). Hagood recognized this key factor and made the requirement that the appeal be filed immediately or the right to appeal is waived.

**A. The Subject Order affects Appellants’ substantial right to counsel of their choice.**

In *Hagood*, our supreme court ruled that an order granting a motion to disqualify a party’s counsel is immediately appealable under section 14-3-330(2) because “[s]uch an order implicitly falls within the statutory definition of a substantial right under [s]ection 14-3-330(2)(a).” 362 S.C. at 197, 607 S.E.2d at 710. The Supreme Court elaborated as follows:

The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case.

*Id.* at 197-98, 607 S.E.2d at 710.

The court continued, “Moreover, the right to be represented by one[’]s preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right.” *Id.* at 198, 607 S.E.2d at 710. The court concluded

that “an order granting a motion to disqualify a party's preferred attorney *must* be immediately appealed or any later objection in a subsequent appeal will be waived.”

*Id.*

Here, the circuit court stated that it denied the Receiver’s motion to terminate Clement Rivers; however, the circuit court effectively granted the Receiver’s motion to disqualify Clement Rivers because the Subject Order vests the Receiver with the ultimate power to control Appellants’ counsels’ representation in this asbestos litigation. Indeed, the Subject Order denies Appellants their choice of counsel because it vests the Receiver, rather than Clement Rivers, with the power to make asbestos litigation decisions if there is a disagreement between the Receiver and Clement Rivers. Call it what you will, but Appellants have lost the right to counsel of their choice. Such an order is not only immediately appealable; but it is mandatory per the Supreme Court that such appeal be brought immediately.

Appellants do not have the counsel of their choice if that counsel is subject to, and constrained by, the Receiver’s decisions. Appellants do not have counsel of their choice if Clement Rivers is forced to defer to the Receiver’s directives regarding the defense of Appellants’ asbestos litigation. Therefore, the Subject Order infringes on Appellants right to counsel of their choice, even though Clement

Rivers has not been dismissed in name only<sup>3</sup>. Accordingly, this Court should find that the Subject Order is immediately appealable.

**II. Alternatively, the Subject Order is immediately appealable under § 14-3-330(4).**

Under section 14-3-330(4), an “interlocutory order . . . granting, continuing, [or] modifying . . . the appointment of a receiver” is immediately appealable.” S.C. Code Ann. § 14-3-330(4).

**A. The Subject Order grants, continues, and/or modifies the appointment of a receiver.**

The Subject Order continues the circuit court’s appointment of Mr. Protopapas as receiver for ACL and reiterates that Mr. Protopapas is in control of ACL’s asbestos litigation. The Subject Order also modifies the circuit court’s appointment of Mr. Protopapas as receiver for Atlas and grants Mr. Protopapas control of Atlas’s asbestos litigation. Therefore, the Subject Order is immediately appealable under section 14-3-330(4).

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<sup>3</sup> In reality, counsel for Appellants gets to play no role or have any say in the trial of these cases. The trial court’s ruling on this issue appears to be novel and lacks support under South Carolina law. Appellants have the clear and unmitigated right to appeal the trial court’s ruling on “weighted representation” of a party, especially when the attorneys have a pending appeal one against the other. The trial court is attempting to do indirectly that which it cannot do directly (i.e. block this appeal). The law recognizes such an approach to any area in the practice of law is erroneous. *Cf. Richardson v. Blalock*, 118 S.C. 438, 110 S.E. 678 (1922).

## CONCLUSION

The Subject Order is immediately appealable pursuant to section 14-3-330(2)(a) because it denies Appellants their choice of counsel. Alternatively, the Subject Order is immediately appealable under section 14-3-330(4) because it grants, continues, and/or modifies the appointment of a receiver. Accordingly, we respectfully request this Court to find that the Subject Order is immediately appealable.

Respectfully submitted,  
CLEMENT RIVERS, LLP

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Corporation Limited and Atlas  
Turner, Inc.*

Charleston, South Carolina

March 25, 2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
  
FOR THE FIFTH JUDICIAL CIRCUIT

HEATHER DONAGHY, as Personal )  
Representative of the Estate of SHIRLEY )  
SMILEY POTTER, deceased, )

C/A NO. 2023-CP-40-03108

Plaintiff, )

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

v. )

4520 CORP., INC. )

ABB INC. )

**SECOND AMENDED SUMMONS**

AMENTUM ENVIRONMENT & ENERGY, )  
INC. )

ARMSTRONG INTERNATIONAL, INC. )

ASBESTOS CORPORATION LIMITED )

ATLAS TURNER INC. )

BAHNSON, INC. )

BEATY INVESTMENTS, INC. )

BECHTEL CORPORATION )

THE BONITZ COMPANY )

BRENNTAG NORTH AMERICA, INC. )

BRENNTAG SPECIALTIES, LLC )

CANVAS CT, LLC )

CARBOLINE COMPANY )

CARRIER CORPORATION )

CELANESE CORPORATION )

CNA HOLDINGS LLC )

COOPER CROUSE-HINDS, LLC )  
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COVIL CORPORATION )  
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DANIEL INTERNATIONAL CORPORATION )  
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EATON CORPORATION )  
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EMERSON ELECTRIC CO. )  
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ERICSSON INC. )  
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FISHER CONTROLS INTERNATIONAL LLC )  
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FLOWSERVE CORPORATION )  
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FLOWSERVE US INC. )  
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FLUOR CONSTRUCTORS )  
INTERNATIONAL )  
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FLUOR CONSTRUCTORS )  
INTERNATIONAL, INC. )  
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FLUOR DANIEL SERVICES CORPORATION )  
)  
FLUOR ENTERPRISES, INC. )  
)  
GENERAL CABLE CORPORATION )  
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GENERAL CABLE INDUSTRIES, INC. )  
)  
GENERAL ELECTRIC COMPANY )  
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GOULD ELECTRONICS INC. )  
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GOULDS PUMPS, INCORPORATED )  
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GOULDS PUMPS LLC )  
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GRAYBAR ELECTRIC COMPANY, INC. )  
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GREAT BARRIER INSULATION CO. )  
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GRINNELL LLC )  
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)

HENRY PRATT COMPANY, LLC )  
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HOWDEN NORTH AMERICA INC. )  
)  
ITT LLC )  
)  
K-MAC SERVICES, INC. )  
)  
METROPOLITAN LIFE INSURANCE )  
COMPANY )  
)  
OCCIDENTAL CHEMICAL CORPORATION )  
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PARAMOUNT GLOBAL )  
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PECW HOLDING COMPANY )  
)  
PLASTICS ENGINEERING COMPANY )  
)  
PRESNELL INSULATION CO., INC. )  
)  
REDCO CORPORATION )  
)  
RILEY POWER INC. )  
)  
ROCKWELL AUTOMATION, INC. )  
)  
R.T. VANDERBILT HOLDING COMPANY, )  
INC. )  
)  
RUST ENGINEERING & CONSTRUCTION, )  
INC. )  
)  
RUST INTERNATIONAL INC. )  
)  
SAINT-GOBAIN ABRASIVES, INC. )  
)  
SCHNEIDER ELECTRIC USA, INC. )  
)  
SEQUOIA VENTURES INC. )  
)  
SIEMENS INDUSTRY, INC. )  
)  
SPENCE ENGINEERING COMPANY, INC. )  
)  
SPIRAX SARCO, INC. )  
)

STANDARD INSULATION COMPANY OF )  
N. C., INC. )  
) )  
STARR DAVIS COMPANY, INC. )  
) )  
STARR DAVIS COMPANY OF S.C., INC. )  
) )  
THERMO ELECTRIC COMPANY INC. )  
) )  
UNION CARBIDE CORPORATION )  
) )  
VANDERBILT MINERALS, LLC )  
) )  
VIKING PUMP, INC. )  
) )  
VISTRA INTERMEDIATE COMPANY LLC )  
) )  
WESTROCK COMPANY )  
) )  
THE WILLIAM POWELL COMPANY )  
) )  
YORK INTERNATIONAL CORPORATION )  
) )  
ZURN INDUSTRIES, LLC )  
) )  
Defendants. )  
\_\_\_\_\_ )

**SECOND AMENDED SUMMONS**

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiff’s counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

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Jamie D. Rutkoski (SC Bar No. 103270)  
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**ATTORNEYS FOR PLAINTIFF**

August 22, 2023  
Columbia, South Carolina

RECEIVED

Mar 25 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County  
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Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley  
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Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate  
Company LLC; The William Powell Company; York International Corporation;  
Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited and Atlas Turner, Inc. are

Appellants.

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**PROOF OF SERVICE**

---

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I, Stephen L. Brown, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that **APPELLANTS' MEMORANDUM ON APPEALABILITY** was served on all other parties to this appeal on March 25, 2024, via email (see attached) to their following counsel of record:

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

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: *s/Stephen L. Brown*  
Stephen L. Brown (SC Bar No. 66468)  
*Attorneys for Appellants*

Charleston, South Carolina

March 25, 2024

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**Cc:** [Bell, Pollyana \(Polly\)](#); [Brown, Stephen L.](#); [Hines, Russell](#); [Gandy, III, James D. \(Tripp\)](#); [Olive, IV, Graydon](#)  
**Subject:** Link/Donaghy v. Asbestos Corporation Limited & Atlas Turner, Inc.; Appellate Case Nos. 2024-000342 & 2024-000348  
**Date:** Monday, March 25, 2024 1:48:12 PM  
**Attachments:** [image001.png](#)  
[Appellants Memorandum on Appealability.pdf](#)  
[Link Summons.pdf](#)  
[Donaghy Summons.pdf](#)

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Attached for service upon you in the above-referenced consolidated appeal, please find the following:

- Appellants' Memorandum on Appealability
- First Amended Summons in Link, being sent to the Court pursuant to their request dated March 14, 2024.
- Second Amended Summons in Donaghy, being sent to the Court pursuant to their request dated March 14, 2024

Thank you,

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