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Apr 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case No. 2024-000524

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton 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.; Beatty 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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation 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, Incl; 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; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party Defendants,

of which

Of which Mohed Altrad, Altrad Investment Authority SAS, ArranCo US, LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Appellants.

**REPLY IN SUPPORT OF
MOTION TO DISMISS APPEALS OF
INTERLOCUTORY DISCOVERY ORDER**

In accordance with this Court’s April 12, 2024 correspondence, the Receiver¹ submits this brief reply in support of his Motion to Dismiss the March 2024 Notices filed by the above-captioned Appellants/Third-Party Defendants (“these Third-Party Defendants”), which the Court has now consolidated into Appellate Case No. 2024-000524.²

Dismissal of these interlocutory March 2024 Notices is required because a defendant cannot unilaterally convert a discovery order into an immediately appealable issue by slipping a so-called “cross-motion for injunction” into their briefing opposing the underlying motions to compel. Otherwise, any litigant could manufacture an immediately-appealable issue out of *any order at any point* by simply opposing the underlying motion with a “gotcha” request to enjoin the moving party from taking any action.

And regardless, these so-called requests for injunctive relief—that these Third-Party Defendants claim were “decided” by the Court in its March 12 Order despite a clear statement in that order to the contrary—*remain pending* in the lower court. They were eleventh-hour requests tacked on to these Third-Party Defendants’ February 16 memoranda opposing the Receiver’s January 12 Motions to Compel. And five days after these “injunctive” requests materialized, the Court informed the Appellants/Third-Party Defendants by email on February 21 that the Court would allow the parties to submit proposed orders on the fully briefed motions to compel, but that

¹ The Receiver is Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd.

² When Appellants/Third-Party Defendants filed their Notices of Appeal on March 19, 2024, they used the appellate case numbers assigned to the first Notices of Appeal they filed in this case on December 18, 2024, i.e., 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, and 2023-002011; the Receiver’s Motion to Dismiss correspondingly referenced those same appellate case numbers. This Court’s April 12, 2024 correspondence, however, informed the parties these March 2024 Notices have been consolidated and assigned Appellate Case No. 2024-000524.

these “recent motions for injunctive relief” would “remain under the Court’s advisement to be addressed at a later time.” (See 2/21/24 Email from E.Diaz, attached hereto as **Exhibit A**). It therefore should have been no surprise to these Third-Party Defendants that the Court’s March 12 discovery order did not take up or address those requests. Yet, still, these Third-Party Defendants now claim that because they “apprised” Chief Justice Toal (Ret.) in their February 16 opposition memoranda that a “refusal to rule on the cross-motion . . . was a denial and refusal of injunctive relief,” (see, e.g., Altrad Defendants’ MTD Opposition, at 7), this somehow trumps her clear statement on February 21 of what she intended to do with these requests and clear statement in the March 12 order of what she was doing with these requests.

The March 12 Order cannot be immediately appealed; it is an order compelling these Third-Party Defendants to participate in discovery—just like the Oppenheimer Third-Party Defendants already are, even though they too filed December 2023 Notices appealing the circuit court’s denial of their motions to dissolve the Receivership. And following the Supreme Court’s March 27, 2024 Order in *Childers v. Davis Mechanical Contractors*, No. 2024-000005 (the “*Childers* Order”), as well as this Court’s orders dismissing similar appeals and citing the *Childers* Order (all of which are attached hereto as **Exhibit B**³), it is clear that all of the Third-Party Defendants’ December 2023 Notices appealing the denial of their motions to dissolve the Receivership also must be

³ Exhibit B includes orders issued in *Childers v. Davis Mechanical Contractors, et al.* No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024)(dismissing, in an order signed by all five justices, as not immediately appealable an order denying appellants’ request to dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No. 2024-000337 (Ct. App. Order dated April 12, 2024)(dismissing as not immediately appealable an order denying appellants’ motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants’ motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024)(same); and *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024)(rejecting appellants’ contention that the circuit court’s order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal).

dismissed, *as they also seek premature review of an interlocutory order which is not immediately appealable.*

Respectfully Submitted,

GALLIVAN, WHITE & BOYD, P.A.

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Gray T. Culbreath, SC Bar No. 11907
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Attorneys for Third-Party Plaintiff

April 16, 2024

EXHIBIT A

Lori Seaborn

From: Diaz, Eva <ediaz@sccourts.org>
Sent: Wednesday, February 21, 2024 4:07 PM
To: John T. Lay; Steve Pugh; Carroll, Todd; Vic Rawl; Toal, Jean
Cc: James Elliott; O'Neill, Elizabeth; john.pierce@lw.com; Cameron Berthelsen; Ben Carlton; Hall, Kevin; Brian Barnwell; Gray Culbreath; Jon Robinson; Shannon Peake; murrell@smithrobinsonlaw.com; Troy Brown; Dana Becker; Brady Edwards; Robert Jacques; Lindsay Valek; Paul A. Scrudato; Charity McQueen; Laura Jordan; Lori Seaborn; Helen Elliott; Lindsay Joyner; 6982_67 John A_ Tibbs and Margaret B_ Tibbs v_ Schneider Electric USA_ Inc_ et al Email _6982_67_
Subject: RE: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel and Pending Motions for Protective Order

Warning – This email originated outside the GWB email system!

Good afternoon, all.

First, Chief Justice Toal has reviewed the proposed orders requested during the Feb. 2, 2024 hearing. The Court will be filing final orders soon.

Second, Chief Justice Toal has approved the request as proposed on behalf of the Receiver, that is, to address the issue of whether motions for protective orders remain pending in proposed orders on the motions to compel. The Court will allow the parties to provide proposed orders on the six motions to compel by Feb. 27, 2024.

Last, at this time, the Court will not request any briefing on the recent motions for injunctive relief filed by the third-party defendants and will remain under the Court's advisement to be addressed at another time.

Let me know if you have any questions.

Best,

Eva Diaz

Judicial Law Clerk
South Carolina Court Administration
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Columbia, SC 29201
ediaz@sccourts.org
Office: (803) 734-0833

From: John T. Lay <jlay@gwblawfirm.com>
Sent: Wednesday, February 21, 2024 12:29 PM
To: Steve Pugh <SPugh@RichardsonPlowden.com>; Carroll, Todd <Todd.Carroll@wbd-us.com>; Vic Rawl <vrawl@grsm.com>; Toal, Jean <JToal@sccourts.org>
Cc: Diaz, Eva <ediaz@sccourts.org>; James Elliott <JElliott@RichardsonPlowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com; Cameron Berthelsen <CBerthelsen@RichardsonPlowden.com>; Ben Carlton <BCarlton@RichardsonPlowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell

<BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Paul A. Scrudato <paul.scrudato@morganlewis.com>; Charity McQueen <CMcQueen@RichardsonPlowden.com>; Laura Jordan <lJordan@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; Helen Elliott <HElliott@RichardsonPlowden.com>; Lindsay Joyner <ljoyner@gwblawfirm.com>; 6982_67 John A_ Tibbs and Margaret B_ Tibbs v_ Schneider Electric USA_ Inc_ et al Email _6982_67_ <{F1077725}.IMANMAIN@031be.imanage.work>
Subject: RE: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel and Pending Motions for Protective Order

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Chief Justice Toal and Ms. Diaz,

To no one's surprise, Third-Party Defendants' filing of these so-called "injunction" motions last Friday is just another delay tactic. The Court has before it two other sets of motions that preceded those and which are ready for decision: (1) 5 motions to dismiss filed two months ago, fully briefed and argued, with proposed orders submitted; and (2) 6 motions to compel filed last month, fully briefed and for which proposed orders could be submitted in less than a week. We respectfully request the Court reject these new requests for further delays and allow the Receiver to secure the information this Court has charged it with securing.

Best regards.

John T.



John T. Lay, Jr.
Partner
jlay@gwblawfirm.com

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From: Steve Pugh <SPugh@RichardsonPlowden.com>

Sent: Wednesday, February 21, 2024 12:11 PM

To: Carroll, Todd <Todd.Carroll@wbd-us.com>; Vic Rawl <vrawl@grsm.com>; Toal, Jean <JToal@sccourts.org>

Cc: Diaz, Eva <ediaz@sccourts.org>; John T. Lay <jlay@gwblawfirm.com>; James Elliott

<JElliott@RichardsonPlowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com; Cameron Berthelsen <CBerthelsen@RichardsonPlowden.com>; Ben Carlton <BCarlton@RichardsonPlowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell <BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Paul A. Scudato <paul.scudato@morganlewis.com>; Charity McQueen <CMcQueen@RichardsonPlowden.com>; Laura Jordan <ljordan@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; Helen Elliott <HElliott@RichardsonPlowden.com>; Lindsay Joyner <ljoyner@gwblawfirm.com>; 6982_67 John A_Tibbs and Margaret B_Tibbs v_Schneider Electric USA_Inc_et al Email_6982_67_<{F1077725}.IMANMAIN@031be.imanage.work>
Subject: RE: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel and Pending Motions for Protective Order

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Chief Justice Toal and Ms. Diaz,

Good afternoon. On behalf of our clients, ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC, we concur with the emails from Mr. Rawl and Mr. Carroll below.

Respectfully submitted,

Sj

HOME	VCARD	BIO	LOCATION
		Steven J. Pugh Attorney at Law SPugh@RichardsonPlowden.com	
		Richardson, Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3721 Fax: 803.779.0016 www.RichardsonPlowden.com	

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From: Carroll, Todd <Todd.Carroll@wbd-us.com>
Sent: Wednesday, February 21, 2024 11:44 AM
To: Vic Rawl <vrawl@grsm.com>; Toal, Jean <JToal@sccourts.org>
Cc: Diaz, Eva <ediaz@sccourts.org>; 'John T. Lay' <jlay@gwblawfirm.com>; James Elliott <JElliott@RichardsonPlowden.com>; Steve Pugh <SPugh@RichardsonPlowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com; Cameron Berthelsen <CBerthelsen@RichardsonPlowden.com>; Ben Carlton <BCarlton@RichardsonPlowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell <BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Troy Brown

<troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Paul A. Scudato <paul.scudato@morganlewis.com>; Charity McQueen <CMcQueen@RichardsonPlowden.com>; Laura Jordan <lJordan@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; Helen Elliott <HElliott@RichardsonPlowden.com>; Lindsay Joyner <ljoyner@gwblawfirm.com>; 6982_67 John A_ Tibbs and Margaret B_ Tibbs v_ Schneider Electric USA_ Inc_ et al Email _6982_67_ <{F1077725}.IMANMAIN@031be.imanage.work>

Subject: RE: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel and Pending Motions for Protective Order

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Chief Justice Toal and Ms. Diaz.

The Altrad Defendants concur with Mr. Rawl's message below, and are also agreeable to the timeline he's proposed, but of course don't object if Mr. Lay and his client want or need more time. Best.

Todd

From: Vic Rawl <vrawl@grsm.com>

Sent: Wednesday, February 21, 2024 11:30 AM

To: Toal, Jean <JToal@sccourts.org>

Cc: Diaz, Eva <ediaz@sccourts.org>; Carroll, Todd <Todd.Carroll@wbd-us.com>; 'John T. Lay' <jlay@gwblawfirm.com>; James Elliott <JElliott@richardsonplowden.com>; Steve Pugh <SPugh@richardsonplowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com; Cameron Berthelsen <CBerthelsen@richardsonplowden.com>; Ben Carlton <BCarlton@richardsonplowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell <BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Paul A. Scudato <paul.scudato@morganlewis.com>; cmcqueen@richardsonplowden.com; Laura Jordan <lJordan@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; HElliott@richardsonplowden.com; Lindsay Joyner <ljoyner@gwblawfirm.com>; 6982_67 John A_ Tibbs and Margaret B_ Tibbs v_ Schneider Electric USA_ Inc_ et al Email _6982_67_ <{F1077725}.IMANMAIN@031be.imanage.work>

Subject: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel and Pending Motions for Protective Order

Dear Chief Justice Toal and Ms. Diaz,

I represent Third-Party Defendants Charter, Central Mining and ESAB ("Third-Party Defendants"), and I have received John T Lay's email below. Initially, John T. is correct that for the reasons set forth in Third-Party Defendants' Objections to the Receiver's proposed order and in Opposition to the Receiver's Motions to Compel, Third-Party Defendants assert that their Motions for Protective Order (requesting that Discovery not go forward until after a final decision on the Motions to Dissolve Receivership) have not been denied or otherwise ruled upon.

Additionally, as to the Court's consideration of any outstanding motions, Third-Party Defendants respectfully reassert their position set forth in Third-Party Defendants' Objections to the Receiver's Proposed Order, their Opposition to the

Receiver's Motions to Compel, and in the Motion for Injunctive Relief. Specifically, it is the Third-Party Defendants' position that pursuant to Rule 205 that this Court was the divested of jurisdiction over the entirety of this third-party action upon Third-Party Defendants' appeal.

If the Court decides that it does have jurisdiction to take any action, Third-Party Defendants respectfully assert that the Court consider (and rule upon) the request for injunctive relief prior to issuing any other orders. To that end, we would propose that the Receiver file his opposition brief to the requested injunctive relief by Tuesday, February 27, 2024, and then all parties could provide proposed orders to the Court by Friday March 1, 2024.

Respectfully submitted,

Vic



A. VICTOR RAWL, JR. (He/Him/His) | Office Managing Partner

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From: John T. Lay <jlay@gwblawfirm.com>

Sent: Tuesday, February 20, 2024 2:13 PM

To: Carroll, Todd <Todd.Carroll@wbd-us.com>; Toal, Jean <JToal@sccourts.org>

Cc: Diaz, Eva <ediaz@sccourts.org>; Vic Rawl <vrawl@grsm.com>; James Elliott <JElliott@richardsonplowden.com>; Steve Pugh <SPugh@richardsonplowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com; Cameron Berthelsen <CBerthelsen@richardsonplowden.com>; Ben Carlton <BCarlton@richardsonplowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell <BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Paul A. Scudato <paul.scudato@morganlewis.com>; cmqueen@richardsonplowden.com; Laura Jordan <ljordan@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; HElliott@richardsonplowden.com; Lindsay Joyner <ljoyner@gwblawfirm.com>; 6982_67 John A_ Tibbs and Margaret B_ Tibbs v_ Schneider Electric USA_ Inc_ et al Email _6982_67_ <{F1077725}.IMANMAIN@031be.imanage.work>

Subject: RE: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel [IMAN-IMANMAIN.FID1077725]

Chief Justice Toal and Ms. Diaz:

Following Mr. Carroll's exchange with the Court below, Third-Party Defendants filed and/or submitted on Friday (2/16) three (3) categories of documents, the scope of which exceeds what

Third-Party Defendants indicated to the Court they would file. Accordingly, the Receiver respectfully proposes the following plan of action to address these submissions:

1. **Proposed Orders Requested During the 2/2/24 Hearing + Objections to the Receiver's Proposed Order.**
 - The Court requested during the 2/2/24 hearing proposed orders from the Receiver and Mr. Elliott denying the five motions to dismiss filed by Mr. Elliott's clients (a group of third-party defendants that refer to themselves as the "Anglo American-De Beers Defendants"). The Court now has before it those competing proposed orders – the one submitted by the Receiver on 2/9 and the one submitted by Mr. Elliott last Friday.
 - Beyond those proposed orders submitted by the Receiver and Mr. Elliott, *other* Third-Party Defendants also filed on Friday "Objections" to the Receiver's proposed order, taking issue with the second paragraph which provides "The Court further reiterates that, during the hearing on October 25, 2023, it ruled on all of the pending motions to stay discovery and/or motions for protective order filed by Third-Party Defendants. Third-Party Defendants have filed no additional motions to stay discovery and/or for protective order, and discovery in this matter must proceed." Third-Party Defendants continue to assert they have pending motions to stay/for protective order that have yet to be ruled on by the Court, they claim not all Third-Party Defendants were represented at the 2/2/24 hearing, and they want the opportunity to be heard thereon.
 - To address these Objections, the Receiver proposes the Court omit the second paragraph of the Receiver's Proposed Order (quoted above) and instead address the issue of whether motions for protective order remain pending in connection with the proposed orders on the motions to compel discussed in the second item listed below. The Receiver has attached hereto a Revised, Proposed Order denying the Anglo American-De Beers Defendants' motions to dismiss which reflects this suggested modification.

2. **Opposition memoranda to the Receiver's six motions to compel.**
 - The second category of documents filed by Third-Party Defendants last Friday is opposition memoranda to the Receiver's six motions to compel. These opposition memoranda echo the Third-Party Defendants' position that their motions for stay/for protective order have not been ruled on and remain pending.
 - As these six motions to compel now have been fully briefed – to include Third-Party Defendants' position that their motions for stay/for protective order have yet to be ruled on – the Receiver proposes the parties submit for the Court's consideration Proposed Orders on these issues one week from today, February 27, 2024.

3. **Cross-motions asking the Court "to enjoin all activity by the Receiver."**
 - Third-Party Defendants also filed on Friday cross-motions styled for "injunctive relief" that ask the Court to order the Receiver to cease all activity in this case while the appeals are pending.
 - As these motions are beyond the scope of what Third-Party Defendants sought permission to file last Friday and have not been briefed, the Receiver proposes these motions be addressed separately in a time and manner of the Court's choosing.

Please let me know if you have any questions or concerns.

Best regards.

John T.



John T. Lay, Jr.
Partner
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From: Carroll, Todd <Todd.Carroll@wbd-us.com>
Sent: Wednesday, February 7, 2024 11:40 AM
To: Toal, Jean <JToal@sccourts.org>
Cc: Diaz, Eva <ediaz@sccourts.org>; Vic Rawl <vrawl@grsm.com>; John T. Lay <jlay@gwblawfirm.com>; James Elliott <JElliott@richardsonplowden.com>; Steve Pugh <SPugh@richardsonplowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com; Cameron Berthelsen <CBerthelsen@richardsonplowden.com>; Ben Carlton <BCarlton@richardsonplowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell <BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Paul A. Scudato <paul.scudato@morganlewis.com>; cmqueen@richardsonplowden.com; Laura Jordan <lJordan@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; HElliott@richardsonplowden.com; Lindsay Joyner <ljoyner@gwblawfirm.com>
Subject: Re: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel

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Super, thank you—we will docket accordingly.

Todd

From: Toal, Jean <JToal@sccourts.org>
Sent: Wednesday, February 7, 2024 11:24:11 AM
To: Carroll, Todd <Todd.Carroll@wbd-us.com>
Cc: Diaz, Eva <ediaz@sccourts.org>; Vic Rawl <vrawl@grsm.com>; John T. Lay <jlay@gwblawfirm.com>; James Elliott <JElliott@richardsonplowden.com>; Steve Pugh <SPugh@richardsonplowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com <john.pierce@lw.com>; Cameron Berthelsen <CBerthelsen@richardsonplowden.com>; Ben Carlton <BCarlton@richardsonplowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell <BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com <murrell@smithrobinsonlaw.com>; Troy

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Subject: Re: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel

Todd Feb 16 is fine . I've instructed Eva to tell you. Best, JHT
Sent from my iPhone

On Feb 7, 2024, at 11:08 AM, Carroll, Todd <Todd.Carroll@wbd-us.com> wrote:

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Ms. Diaz,

As directed below, our clients will prepare and submit an opposition memo to the motion to compel. If it suits the Court, we would propose docketing next Friday (Feb. 16) as the deadline to make those submissions. That would sync this deadline with the third-party defendants' existing deadline for providing objections to the Receiver's proposed orders, as Her Honor directed at last week's hearing. It would also provide Ms. O'Neill and I a little breathing room to prepare a memo while we are also in an asbestos trial with you next week. Best,

Todd

Todd Carroll

Partner

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e: Todd.Carroll@wbd-us.com<<mailto:Todd.Carroll@wbd-us.com>>

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Signature for Carroll, Todd

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From: Diaz, Eva <ediaz@sccourts.org>
Sent: Tuesday, February 6, 2024 9:05 AM
To: Vic Rawl <vrawl@grsm.com>; John T. Lay <jlay@gwblawfirm.com>; Toal, Jean <JToal@sccourts.org>
Cc: Carroll, Todd <Todd.Carroll@wbd-us.com>; James Elliott <JElliott@RichardsonPlowden.com>; Steve Pugh <SPugh@RichardsonPlowden.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; john.pierce@lw.com; Cameron Berthelsen <CBerthelsen@RichardsonPlowden.com>; Ben Carlton <BCarlton@RichardsonPlowden.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Brian Barnwell <BB@rplegalgroup.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Shannon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Paul A. Scrudato <paul.scrudato@morganlewis.com>; CMcQueen@RichardsonPlowden.com; Laura Jordan <lJordan@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; HElliott@RichardsonPlowden.com; Lindsay Joyner <ljoyner@gwblawfirm.com>
Subject: RE: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel

Mr. Rawl and Counsel for Third-Party Defendants,

Chief Justice Toal will not be adding this to the agenda for tomorrow. Instead, she will rule on the papers once all the parties have responded and fully briefed the outstanding motions. She asks this be done as quickly as possible.

Best,

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From: Vic Rawl <vrawl@grsm.com<<mailto:vrawl@grsm.com>>>
Sent: Monday, February 5, 2024 5:29 PM
To: John T. Lay <jlay@gwblawfirm.com<<mailto:jlay@gwblawfirm.com>>>; Toal, Jean <JToal@sccourts.org<<mailto:JToal@sccourts.org>>>; Diaz, Eva <ediaz@sccourts.org<<mailto:ediaz@sccourts.org>>>
Cc: Carroll, Todd <Todd.Carroll@wbd-us.com<<mailto:Todd.Carroll@wbd-us.com>>>; James Elliott <JElliott@RichardsonPlowden.com<<mailto:JElliott@RichardsonPlowden.com>>>; Steve

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Subject: Re: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
Chief Justice Toal and Ms. Diaz,

I am in the House of Delegates meeting at the American Bar Association meeting in Louisville Kentucky. I just received Mr. Lay's request that you rule on Receiver's outstanding motions without a hearing and without any response briefs having been filed by any of the Third-Party Defendants OR that a hearing go forward on the motions on 2/7 (with less than 2 days notice).

I represent ESAB, Central Mining and Charter in this action. I am not scheduled to be in South Carolina on Wednesday (2/7), and would request that the court not schedule a hearing on these motions with less than 2 days notice.

Further, per your ruling last week, the Receiver is to have his proposed orders on Third-Party Defendants' motions to dismiss and motions for protective order to Third-Party Defendants by this Friday 2/9, and Third-Party Defendants are to have their comments prepared by Friday 2/16.

I would respectfully requests that a hearing be scheduled on the Receiver's motions to compel with at least 10 days notice such that my clients may have the opportunity to brief their responses to the outstanding motions.

Respectfully submitted,

Vic

[Gordon & Rees, Scully Mansukhani - Your 50 State Partner]<[A. VICTOR RAWL, JR. \(He/Him/His\) | Office Managing Partner](https://urldefense.com/v3/__https://secure-web.cisco.com/1xAxj5YjaneFB1iNcF29Ep6ZoO3V3TsfOvXgVoywIbfovlEI12krvRgntZnKFUAQ_MOBthN8uIXNQWyYJC25JeG0AiS0IEq9Bw_tr8A-WoTMJvhZsrez6H8MSFyLvY0I0sG0YxW8PGxsqJPF6X7sDxnBAGsCH8sDS8OoBgujsVJuf_wkymcZKi8g_TqPeG95eiGalJ-27Z14PpuF4eApfuV-K2VI3s-5ezwefP_H1FBWj9t4X7B4WtFz9aPCvA4lEdmDGO9y2gVFouyyYio3PM9wYeU9_YAgBJhSDT1lKlklEdlbRpFObr12_e4uh9CFS8FctuuawZm2sh4DDVifuNWvEoemBmcWwbPa8O9Dc--7lBr8Q2fFZh5jW5XKLMSH7Ea-_B2o2CeCAJ6Xz02EkVluhKILNaxtCGt9WGzDM3zBLmZdNZFpo9VolDqRALexvz67KZKZQ_qSi3iT2UO5ppg/https*3A*2F*2Furldefense.com*2Fv3*2F__https*3A*2Fsecure-web.cisco.com*2F19rKbBMeDYS5EWsHAesX_CNVgXwJ9h-z8S21DJhfFTVAzlliyd7twJ8UqKGnZkjV57PdMoll5uQd2G3ikHOOyA5htw-87vsV_msPFIU4zKpT_wwwOO4VdgWAPCzXVW9Ab5an_X_DvML_ihiNzi3kCXJ3pEHQG5H7cZHYL Bt39jKDn_Su63GeYfd78n9JURoDqEF5HI8xqx4EtsKbqEyh0lu2oyVY48xHodZPiSX_0ahygYw63wlU3 YbzLkj6kuJUybCtOB1fFwkdqRZWL3nuFH27pCDolWlszLe65lEpJWXwsnuK04EnKtBkXWJ1forqcnw 6L8PaCzELnzeV60oTk9Bg-2rP5l8lkGqsylFqiuY6jAljcHq4vSofKvIPGPGbV7Le6VcvmwqZFyqb6CNeUUSeZw0arh430Mf-cmTcS0-nxLQGjby1ny8c0YrIbST*2Fhttps*2A3A*2A2F*2A2Fwww.grsm.com*2A2F__*3BJSUIUQ*21*21NROYQQ*21bJsxkX6nl3YL-WJPM0bmoEbfq7oLeQQuemDQ4rbu11vWbbikvZqzmQB3T15lDkMyBJJGEbZ2QsGS86scJl4*24__ ;JSUUSUUSUUSUUSUUSU!!NROYQQ!aY4Q9GlsLdlpjvi-q9AFrCLnobgt592a_LMDE90M67hY541EW0_XxxMpCkpWEle2gx9teA_SOTGCSdl8cwY$ ></p></div><div data-bbox=)

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From: John T. Lay <jlay@gwblawfirm.com<mailto:jlay@gwblawfirm.com>>
Sent: Monday, February 5, 2024 3:52:07 PM
To: Toal, Jean <JToal@sccourts.org<mailto:JToal@sccourts.org>>; Diaz, Eva
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Cc: Carroll, Todd <Todd.Carroll@wbd-us.com<mailto:Todd.Carroll@wbd-us.com>>; Vic Rawl
<vrawl@grsm.com<mailto:vrawl@grsm.com>>; James Elliott
<JElliott@RichardsonPlowden.com<mailto:JElliott@RichardsonPlowden.com>>; Steve Pugh
<SPugh@RichardsonPlowden.com<mailto:SPugh@RichardsonPlowden.com>>; O'Neill,
Elizabeth <Elizabeth.ONeill@wbd-us.com<mailto:Elizabeth.ONeill@wbd-us.com>>;
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<john.pierce@lw.com<mailto:john.pierce@lw.com>>; Cameron Berthelsen <CBerthelsen@RichardsonPlowden.com<mailto:CBerthelsen@RichardsonPlowden.com>>; Ben Carlton <BCarlton@RichardsonPlowden.com<mailto:BCarlton@RichardsonPlowden.com>>; Hall, Kevin <Kevin.Hall@wbd-us.com<mailto:Kevin.Hall@wbd-us.com>>; Brian Barnwell <BB@rplegalgroup.com<mailto:BB@rplegalgroup.com>>; Gray Culbreath <gculbreath@gwblawfirm.com<mailto:gculbreath@gwblawfirm.com>>; Jon Robinson <jon@smithrobinsonlaw.com<mailto:jon@smithrobinsonlaw.com>>; Shannon Peake <shanonp@smithrobinsonlaw.com<mailto:shanonp@smithrobinsonlaw.com>>; murrell@smithrobinsonlaw.com<mailto:murrell@smithrobinsonlaw.com>>; murrell@smithrobinsonlaw.com<mailto:murrell@smithrobinsonlaw.com>>; Troy Brown <troy.brown@morganlewis.com<mailto:troy.brown@morganlewis.com>>; Dana Becker <dana.becker@morganlewis.com<mailto:dana.becker@morganlewis.com>>; Brady Edwards <brady.edwards@morganlewis.com<mailto:brady.edwards@morganlewis.com>>; Robert Jacques <Robert.jacques@morganlewis.com<mailto:Robert.jacques@morganlewis.com>>; Lindsay Valek <Lindsay@rplegalgroup.com<mailto:Lindsay@rplegalgroup.com>>; Brian Barnwell <BB@rplegalgroup.com<mailto:BB@rplegalgroup.com>>; Paul A. Scudato <paul.scudato@morganlewis.com<mailto:paul.scudato@morganlewis.com>>; CMcQueen@RichardsonPlowden.com<mailto:CMcQueen@RichardsonPlowden.com>>; CMcQueen@RichardsonPlowden.com<mailto:CMcQueen@RichardsonPlowden.com>>; Laura Jordan <ljordan@gwblawfirm.com<mailto:ljordan@gwblawfirm.com>>; Lori Seaborn <lseaborn@gwblawfirm.com<mailto:lseaborn@gwblawfirm.com>>; HElliott@RichardsonPlowden.com<mailto:HElliott@RichardsonPlowden.com>>; HElliott@RichardsonPlowden.com<mailto:HElliott@RichardsonPlowden.com>>; Lindsay Joyner <ljoyner@gwblawfirm.com<mailto:ljoyner@gwblawfirm.com>>
Subject: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel

Chief Justice Toal and Ms. Diaz, On January 12, 2024, the Receiver filed six motions to compel that fall into two categories: four motions to compel substantive discovery responses from all remaining Third-Party Defendants (organized into four

Chief Justice Toal and Ms. Diaz,

On January 12, 2024, the Receiver filed six motions to compel that fall into two categories:

1. four motions to compel substantive discovery responses from all remaining Third-Party Defendants (organized into four categories that correspond with the objections Third-Party Defendants served); and
2. two motions to compel 30(b)(6) depositions of Central Mining & Investment Corporation, Ltd. and Arranco US, LLC.

Although these motions were not on the agenda for last Friday's hearing, the Receiver believes the Court can rule on these motions without oral argument. To the extent oral argument would be helpful to the Court, the Receiver requests these motions be added to the Court's agenda for the hearing on Wednesday, February 7.

Please let me know if you have any questions or concerns.

Best regards.

John T.

<image001.jpg>

John T. Lay, Jr.

Partner

jlay@gwblawfirm.com<mailto:jlay@gwblawfirm.com>

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# EXHIBIT B

# The South Carolina Court of Appeals

Michael David Link and Sandra Strickland Link,  
Plaintiffs,

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum Environment & Energy, Inc., Armstrong International, Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel Corporation, 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, 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., Southern Insulation, 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,

AND

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

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum  
Environment & Energy, Inc., Armstrong International,  
Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel  
Corporation, 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, 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., Southern Insulation, 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, AND Heather Donaghy v. 4520 Corp., Inc.

Appellate Case No. 2024-000342

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ORDER

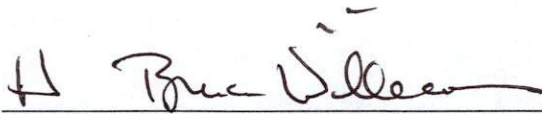
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This consolidated appeal arises out of a circuit court order dated February 23, 2024, denying the receiver's motion to terminate representation of Appellants' counsel of choice and directing Appellants' counsel to cooperate with the receiver. Appellants engaged the legal services of Clement Rivers, LLP. Appellants assert they were deprived of utilizing their choice of counsel, although the order on appeal denied the receiver's motion to terminate Appellants' representation by Clement Rivers. The denial of a motion to terminate representation is not

immediately appealable. *See EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 619, 738 S.E.2d 478, 480 (2013) ("[A]n order denying a motion to disqualify an attorney is not immediately appealable."). Contrary to Appellants' assertions, the order on appeal is distinguishable from that in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d, 707 (2005). In *Hagood*, the supreme court found "an order granting a motion to disqualify a party's preferred attorney *must* be immediately appealed or any later objection in a subsequent appeal [would] be waived." *Id.* at 198, 607 S.E.2d at 710. The action taken by the circuit court in this appeal is more akin to the order appealed in *Hopkins*, wherein the circuit court denied the motion to disqualify counsel. *See Hopkins*, 401 S.C. at 616, 619, 738 S.E.2d at 479, 480. Thus, this order is not immediately appealable.

Appellants also argue the order on appeal is immediately appealable pursuant to section 14-3-330(4) of the South Carolina Code (2017). Specifically, Appellants contend the circuit court's order impermissibly permits the receiver to continue his duties during the pendency of the appeal. This order is also not immediately appealable. *See Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership).

Based on the foregoing, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

  
\_\_\_\_\_, C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

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Graydon V. Olive, IV, Esquire  
Theile Branham McVey, Esquire  
Jamie Rae Rutkoski, Esquire  
Aaron Daniel Chapman, Esquire

**FILED**  
**Apr 12 2024**

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Richard Brandon Larrabee, Esquire  
Robert Turner Bonds, Esquire  
John Kenneth Chandler, Esquire  
Stephen Augustus Griffith, Jr., Esquire  
Charles William Branham, III, Esquire  
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Peter Demos Protopapas, Esquire  
Shanon N. Peake, Esquire  
Jonathan M. Robinson, Esquire

# The South Carolina Court of Appeals

Donna B. Welch, individually and as Personal  
Representative of the Estate of Melvin G. Welch,  
deceased, Respondent,

v.

Advance Auto Parts, Inc., American Honda Motor Co.,  
Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor  
to Atlas Asbestos Co, a foreign company, Bahnson, Inc.,  
Covil Corporation, Daniel International Corporation,  
Davis Mechanical Contractors, Inc., Ellington Insulation  
Company, Inc., Fluor Constructors International f/k/a  
Fluor Corporation, Fluor Constructors International, Inc.,  
Fluor Daniel Services Corporation, Fluor Enterprises,  
Inc., General Parts, Inc. individually and as successor-in-  
interest to Carquest Corporation; Goodrich Corporation  
f/k/a The B. F. Goodrich Company, The Goodyear Tire  
& Rubber Company, Graybar Electric Company, Inc.,  
Honeywell International, Inc. individually and as  
successor-in-interest to Allied Signal, Inc., as successor  
to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner  
Morse Tec LLC, and successor-by-merger to Borg-  
Warner Corporation, Occidental Chemical Corporation  
as successor to Durez Corporation; O'reilly Automotive  
Stores, Inc., Paramount Global f/k/a Viacomcbs Inc.,  
f/k/a CBS Corporation, a Delaware corporation f/k/a  
Viacom, Inc., successor-by-merger to CBS Corporation,  
a Pennsylvania corporation, f/k/a Westinghouse Electric  
Corporation, Pneumo Abex LLC successor-in-interest to  
Abex Corporation, Redco Corporation f/k/a Crane Co.,  
Reinz Wisconsin Gasket LLC f/k/a and/or successor to  
Reinz Wisconsin Gasket Co. and Wisconsin Gasket  
Manufacturing Co., a wholly owned subsidiary of Dco  
LLC, Rust Engineering & Construction, Inc., Rust  
International Inc., Southern Insulation, Inc., Spirax  
Sarco, Inc., Union Carbide Corporation, Westrock  
MWV, LLC individually and as successor-in-interest to

Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

of which Atlas Turner, Inc., The Continental Insurance Company, Certain Underwriters at Lloyd's London, and Certain London Market Companies are the Appellants,

and

Donna B. Welch, individually and Personal Representative of the Estate of Melvin G. Welch, deceased,

and

Peter D. Protopapas, Duly Appointed Receiver for Atlas Turner, Inc., are Respondents.

Appellate Case No. 2024-000337

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ORDER

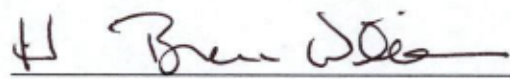
---

This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants' motions for protection from discovery. These orders are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRPC, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a

receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

  
\_\_\_\_\_, C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

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James D. Gandy, III, Esquire  
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Austin Tyler Reed, Esquire  
Brian Montgomery Barnwell, Esquire  
John Kenneth Chandler, Esquire  
Harry Lee, Esquire  
A. Victor Rawl, Jr., Esquire

**FILED**  
**Apr 12 2024**

# The South Carolina Court of Appeals

Ted Everette Mitchell, individually and as Executor of  
the Estate of Patsy Ann Mitchell, Plaintiff,

v.

3M Company, ABB Inc.; Advance Auto Parts, Inc.; Air  
& Liquid Systems Corporation; Alfa Laval, Inc.;  
Amentum Environment & Energy, Inc.; Ametek, Inc.;  
Anchor/Darling Valve Company; A.O. Smith  
Corporation; Armstrong International, Inc.; Asbestos  
Corporation Limited; Atlas Turner, Inc.; AWT Air  
Company, Inc.; Bahnson, Inc.; Beatty Investments, Inc.;  
Bechtel Investments, Inc.; The Bonitz Company; BW/IP  
Inc.; Cameron International Corporation; Cape PLC;  
Carrier Corporation; Carver Pump Company; Champlain  
Cable Corporation; Cleaver-Brooks, Inc.; Clyde Union  
Inc.; Covil Corporation; Crane Co.; Crane Instrument &  
Sampling, Inc.; Daniel International Corporation; Davis  
Mechanical Contractors, Inc.; Detroit Stoker Company,  
LLC; Ellington Insulation Company, Inc.; Erico  
International Corporation; Fisher Controls International,  
LLC; Flowserve US Inc.; Fluor Constructors  
International; Fluor Constructors International, Inc.;  
Flour Daniel Services Corporation; Fluor Enterprises,  
Inc.; FMC Corporation; Ford Motor Company; Foster  
Wheeler Energy Corporation; Gardner Denver, Inc.;  
General Electric Company; General Parts, Inc.; Genuine  
Parts Company; The Goodyear Tire & Rubber Company;  
The Gorman-Rupp Company; Goulds Pumps,  
Incorporated; Graphic Packaging International, LLC;  
Great Barrier Insulation Co.; Grinnell LLC; Hercules  
LLC; Honeywell International, Inc.; IMO Industries Inc.;  
Industrial Holdings Corporation; International Paper  
Company; ITT LLC; J.&L. Insulation, Inc.; Metropolitan  
Life Insurance Company; Morse Tec LLC; Moyno, Inc.;  
NIBCO Inc.; Paramount Global; Pennsylvania  
Transformer Technology, Inc.; Presnell Insulation Co.,

Inc.; Redco Corporation; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric Systems USA, Inc.; Sequoia Ventures Inc.; Service Products, Inc.; The Sherwin-Williams Company; Southern Insulation, Inc.; Spirax Sarco, Inc.; SPX Corporation; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; 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,

Asbestos Corporation Limited, by and through its duly appointed Receiver, Peter D. Protopapas, Third Party Plaintiff/Respondent,

v.

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America; The Continental Insurance Company; Federal Insurance Company; Travelers Casualty and Surety Company f/k/a Aetna Life & Casualty Co., Third Party Defendants,

of which Travelers Casualty and Surety Company f/k/a Aetna Life and Casualty Co., and The Continental Insurance Company are the Appellants.

Appellate Case No. 2024-000341

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ORDER

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This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants'

motions for protection from discovery. These orders are not immediately appealable. See *Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRCRCP, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

 C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

**FILED**  
**Apr 12 2024**

Matthew Todd Carroll, Esquire  
Mary Elizabeth O'Neill, Esquire  
Stephen Lynwood Brown, Esquire  
James D. Gandy, III, Esquire  
Brian Montgomery Barnwell, Esquire  
John Kenneth Chandler, Esquire  
Stephen Augustus Griffith, Jr., Esquire  
Austin Tyler Reed, Esquire  
Jonathan M. Robinson, Esquire  
Shanon N. Peake, Esquire  
G. Murrell Smith, Jr., Esquire  
Harry Lee, Esquire  
A. Victor Rawl, Jr., Esquire

**FILED**  
**Apr 12 2024**

# The Supreme Court of South Carolina

Lenora Childers, Individually and as Personal  
Representative of the Estate of Lewis C. Childers,  
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,  
Inc.; General Boiler Casing Company, Inc.; HEFCO,  
Inc.; J.R. Deans Company, Inc.; Payne & Keller  
Company; SFB, Incorporated; Stafford Insulation  
Company; Standard Insulation Company of N.C., Inc.;  
Systra Engineering, Inc.; United Construction Co. of  
Rome, Inc.; Wind Up, Ltd., Individually and as  
Successor-in-Interest to Pipe & Boiler Insulation, Inc.  
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of  
Rome, Inc.; Wind Up, Ltd., Individually and as  
Successor-in-Interest to Pipe & Boiler Insulation, Inc.  
f/k/a Carolina Industrial Insulating Co.; and Payne &  
Keller Company, By and Through Their Duly Appointed  
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and  
as Successor to Northern Insurance Company of New  
York, Maryland All American General Insurance  
Company, and Maryland Casualty Company); Allstate  
Insurance Company; John Tighe; Sean Antony Beatty;  
Dennis William Cahill; Catherine Ann Carlino; Andre  
Lefebvre; David Dean Shumway; Gil Chandler; Michael  
Davenport; Linda Young Pettigrew; Gwyn Wallace  
Fuller; Daniel Robert Keddie; Julie Ann Fortune;  
Michael John Crall; James Francis Meehan; Larry Gene  
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital

Corp.; Admiral Insurance Company; Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna

Casualty and Surety Company, are Appellants.

Appellate Case No. 2024-000005

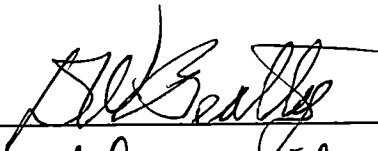
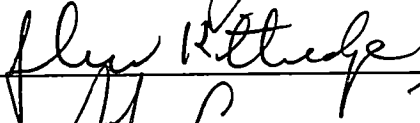
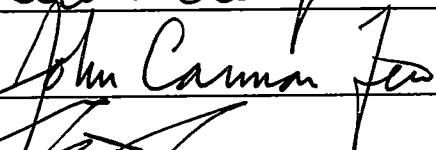


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ORDER

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Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

|                                                                                      |      |
|--------------------------------------------------------------------------------------|------|
|   | C.J. |
|  | J.   |
|  | J.   |
|  | J.   |
|  | J.   |

Columbia, South Carolina  
March 27, 2024

cc:

Wesley Brian Sawyer  
Brian Montgomery Barnwell  
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Jonathan M. Robinson  
Shanon N. Peake  
Matthew Todd Carroll  
Mary Elizabeth O'Neill  
Harry Lee  
The Honorable Jenny Abbott Kitchings

RECEIVED

Apr 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
In the Court of Common Pleas  
For the Fifth Judicial Circuit

The Honorable Jean H. Toal,  
Acting Circuit Court Judge

---

Civil Action No. 2023-CP-40-01759

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Appellate Case No. 2024-000524

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John A. Tibbs v. Asbestos Corporation Limited, et al

---

**PROOF OF SERVICE**

---

I, Lindsay A. Joyner., of Gallivan White and Boyd, PA, *Attorney for Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas*, hereby certify that the **REPLY IN SUPPORT OF MOTION TO DISMISS APPEALS OF INTERLOCUTORY DISCOVERY ORDER** was served on all other parties to this appeal on April 16, 2024, via email to their following counsel of record:

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(212) 309-6000  
*Attorneys for Third-Party Plaintiff*

April 16, 2024

**From:** [Lindsay Joyner](#)  
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**Bcc:** ["10565\\_1 Keith W Park individually and as the PR of the Estate of Isabella Park v Cape PLC et al Email 10565\\_1"](#)  
**Subject:** RE: Tibbs v. Asbestos Corporation Limited, App. Case Nos.: 2024-000524 [IMAN-IMANMAIN.FID1086139]  
**Date:** Tuesday, April 16, 2024 10:40:00 AM  
**Attachments:** [04.16.24 Reply in Support of MTD w Exhibits and POS.pdf](#)

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All,

Please find served upon you, in compliance with the Supreme Court's Order dated May 6, 2022, Respondent's Reply in Support of Motion to Dismiss Appeals of Interlocutory Discovery Order in the above-referenced appellate case, which we will be filing with the Court of Appeals of South Carolina momentarily, which will include a copy of this email with the POS attached here as well.

Please let me know if you have any questions.

Thanks,  
Lindsay



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