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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 Nos.

2023-002006

2023-002007

2023-002008

2023-002009

2023-002010

2023-002011

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.; 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.; 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

Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bidco US Inc., Sparrows Offshore, LLC, Anglo American PLC, De Beers, PLC, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd are the

Appellants.

**MOTION TO DISMISS
INTERLOCUTORY APPEALS**

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, 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. (the “Receiver”) respectfully requests this Court dismiss the December 18, 2023 Notices of Appeal (the “December 2023 Notices”) filed by Appellants in the above-captioned cases.¹

The December 2023 Notices all seek premature, interlocutory review of a circuit court order entered on December 6, 2023, titled “Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction,” which rejected appellants’ personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership (the “December 6 Interlocutory Order”). South Carolina law is clear—and has been clear for many years—that such orders are not immediately appealable.

Indeed, both the South Carolina Supreme Court and this Court have recently *and decisively* dismissed as premature similarly-situated, interlocutory appeals which too sought immediate

¹ Appellants and their corresponding case numbers are as follows:

- Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case No. 2003-002006);
- Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case No. 2003-002007);
- Anglo American PLC, De Beers PLC, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., and De Beers Centenary AG (Appellate Case No. 2003-002008);
- ESAB Corporation (Appellate Case No. 2003-002009);
- Charter Consolidated Ltd. (Appellate Case No. 2003-002010); and
- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002022).

review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. See Packet of Orders attached hereto as **Exhibit A**, 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); *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). The outcome should be no different in this case, and Appellants should not be permitted to continue to clog our courts with meritless appeals like this one. Dismissal is warranted.²

(Signature page follows)

² The Receiver also requests that while this Court considers this motion, it hold in abeyance all other briefing and submission deadlines.

Respectfully Submitted,

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April 16, 2024

EXHIBIT A

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

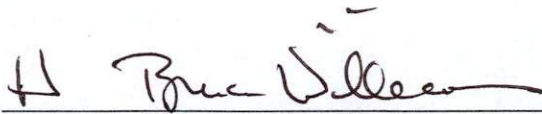
ORDER

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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James D. Gandy, III, Esquire
Graydon V. Olive, IV, Esquire
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Aaron Daniel Chapman, Esquire

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David Christopher Humen, Esquire
Richard Brandon Larrabee, Esquire
Robert Turner Bonds, Esquire
John Kenneth Chandler, Esquire
Stephen Augustus Griffith, Jr., Esquire
Charles William Branham, III, Esquire
Jonathan Marshall Holder, 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


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:

Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Stephen Lynwood Brown, Esquire
James D. Gandy, III, Esquire
Stephen Augustus Griffith, Jr., Esquire
G. Murrell Smith, Jr., Esquire
Jonathan M. Robinson, 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

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), 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:

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Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
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Shanon N. Peake, Esquire
G. Murrell Smith, Jr., Esquire
Harry Lee, Esquire
A. Victor Rawl, Jr., Esquire

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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

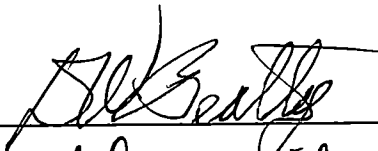
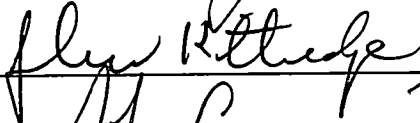
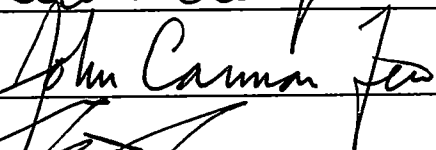


Casualty and Surety Company, are Appellants.

Appellate Case No. 2024-000005

ORDER

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
John Belton White, Jr.
Marghretta Hagood Shisko
Scott Shutte
Christopher Rutledge Jones

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

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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

Case No. 2023-CP-40-01759

Appellate Case Nos.

2023-002006

2023-002007

2023-002008

2023-002009

2023-002010

2023-002011

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 **MOTION TO DISMISS INTERLOCUTORY APPEALS** 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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April 16, 2024

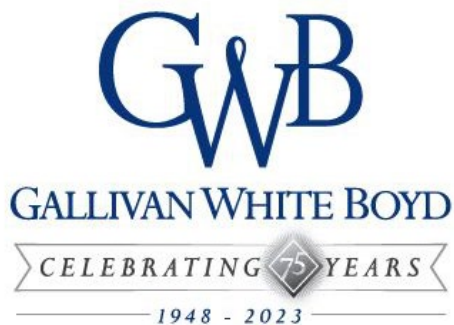
From: [Lindsay Joyner](#)
To: ["James Elliott"](#); ["Cameron Berthelsen"](#); ["Marcy Dalton"](#); ["TMcVey@kassellaw.com"](#); ["jrutkoski@kassellaw.com"](#); ["tbranham@dobslegal.com"](#); ["achapman@dobslegal.com"](#); ["dhumen@dobslegal.com"](#); ["khardin@dobslegal.com"](#); ["tbarnes@dobslegal.com"](#); [Peter Protopapas](#); [John Chandler](#); [Brian Barnwell](#); ["Todd.carroll@wbd-us.com"](#); ["kevin.hall@wbd-us.com"](#); ["Elizabeth.ONeill@wbd-us.com"](#); ["Steve Pugh"](#); ["Ben Carlton"](#); ["Carmen Ganjehsani"](#); ["Ashwin Sanzgiri"](#); ["vrawl@grsm.com"](#); [Shannon Peake](#); [Jon Robinson](#); ["murrell@smithrobinsonlaw.com"](#); [John T. Lay](#); [Gray Culbreath](#); [Laura Jordan](#); [Eleanor Jones](#); ["sbrown@ycrlaw.com"](#); ["RHines@ycrlaw.com"](#); ["tgandy@ycrlaw.com"](#); ["golive@ycrlaw.com"](#); ["AJustman@ycrlaw.com"](#); ["pbell@ycrlaw.com"](#); ["Helen Elliott"](#); [Amelia Farmer](#); [Lori Seaborn](#); [Troy Brown](#); [Dana Becker](#); [Brady Edwards](#); [Robert Jacques](#); [Paul A. Scudato](#)
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: Tibbs v. Asbestos Corporation Limited, App. Case Nos.: 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011 [IMAN-IMANMAIN.FID1086139]
Date: Tuesday, April 16, 2024 10:44:20 AM
Attachments: [04.16.24 MTD First Appeals w Exhibit and POS.pdf](#)

All,

Please find served upon you, in compliance with the Supreme Court's Order dated May 6, 2022, Respondent's Motion to Dismiss Interlocutory Appeals in the above-referenced appellate cases, 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



Lindsay Anne Joyner
Partner
ljoyner@gwblawfirm.com

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