

RECEIVED

Apr 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefer Toal, Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs.....Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The

Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking ump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....Defendants,

of which

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

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
CERTAIN UNDERWRITERS AT LLOYD’S, LONDON
AND CERTAIN LONDON MARKET INSURANCE COMPANIES
IN SUPPORT OF APPELLANT**

Theodore L. Manos
SC Bar #8660
Robertson Hollingsworth Manos & Rahn, LLC
550 King Street, Suite 300
Charleston, SC 29403
(843) 723-6470
tlm@roblaw.net

*Attorney for Certain Underwriters at Lloyd’s,
London and Certain London Market
Insurance Companies*

Certain Underwriters at Lloyd’s, London and certain London market insurance companies (“Certain London Market Insurers” or “CLMI”)* subscribing severally (not jointly) to certain excess liability insurance policies regarding Asbestos Corporation Limited (“ACL”) move the Court for leave to file an *amicus curiae* brief in this matter. CLMI conditionally file their brief with this Motion.

CLMI are part of an insurance and reinsurance market located in the United Kingdom, which operates as a partially mutualized marketplace in which multiple financial backers pool and spread risk. The market dates to 1689 and operates today as the world’s leading insurance and reinsurance marketplace. CLMI’s ACL insurance policies do not allow CLMI to control the defense or settlement of any covered claim against ACL. Instead, where there is coverage, they obligate CLMI to pay certain defense costs as well as certain judgments and settlements.

An *amicus curiae* brief from CLMI is warranted due to the critical importance of the novel issues before the Court and the unique perspective that CLMI can bring to this case. As insurers, CLMI have experienced firsthand the tremendous, unanticipated costs and destabilizing effects of the trial court’s imposition of a receivership on ACL: an active, solvent Canadian corporation.

As a result of the trial court’s appointment of Peter Protopapas as ACL’s Receiver, CLMI have been placed in the untenable position of deciding whether to follow the directives of ACL’s board and officers—on pain of incurring potential civil liability to ACL if they do not—or the irreconcilable directions of ACL’s Receiver—on pain of potential contempt sanctions for noncompliance. For example, after CLMI—in compliance with the Receiver’s requests—recently

* Certain London market insurance companies as to which certain claims are administered by third-party claims administrator, Resolute Management Inc., consist of The Scottish Lion Insurance Company Ltd., Tenecom Ltd. (as successor to relevant liabilities of Winterthur Swiss Insurance Company), and Yasuda Fire and Marine Insurance Company (UK) Limited, now known as Tenecom Ltd.

extended funds to settle five asbestos cases pending against ACL, attorneys retained by ACL's board and officers in Canada accused CLMI of materially breaching their contractual obligations to ACL.

In addition, in two asbestos personal-injury cases in which CLMI are nonparties, the trial court has already sanctioned CLMI for allegedly failing to cooperate with the Receiver, imposing a staggering \$50,000 daily penalty on CLMI and leaving it to the Receiver to decide when, if ever, CLMI have purged that contempt. *See* Order on Plaintiffs' and Receiver's Motion for Sanctions and Contempt, *Link v. 4520 Corp.*, No. 2022-CP-40-05543, *Donaghy v. 4520 Corp.*, No. 2022-CP-40-03108 (S.C. Ct. Common Pleas, 5th Cir. Mar. 22, 2024). CLMI's appeal of that order is now pending before this Court. *See Link v. 4520 Corp.*, No. 2024-000501. The Receiver has also demanded onerous third-party discovery from CLMI, which the trial court granted over CLMI's objection, Order on Discovery, pp. 3–4, *McDowell v. A.O. Smith Corp.*, No. 2023-CP-40-06157 (S.C. Ct. Common Pleas, 5th Cir. Mar. 22, 2024), and has filed a third-party complaint directly against CLMI and other ACL insurers, seeking a range of coverage-related declarations, *see Lewis v. Asbestos Corp.*, No. 2024-CP-40-00458 (S.C. Ct. Common Pleas, 5th Cir. Feb. 21, 2024).

The costs to CLMI of complying with the trial court's orders, responding to the Receiver's motions and discovery demands, and defending against the Receiver's third-party complaint have been substantial. And those amounts have been compounded by the additional costs to CLMI of complying with the Receiver's requests to settle claims against ACL in amounts that may well exceed what CLMI would have been required to pay if ACL's board and officers were still controlling its defense.

This case raises significant questions about the validity of the trial court's appointment of the Receiver, including (1) whether any provision of South Carolina law authorized the trial court

to impose a receivership on a solvent foreign corporation as a discovery sanction, and (2) whether the Receiver's appointment violates the United States Constitution by impermissibly interfering with Congress's exclusive power to regulate foreign commerce and intruding on Congress's exclusive power to conduct the foreign affairs of the United States. CLMI have a direct and substantial interest in the resolution of those questions and a unique and valuable perspective to bring to bear as insurers of ACL.

Accordingly, the Court should grant leave for CLMI to file an *amicus curiae* brief in support of Appellant. Pursuant to Rule 243, SCACR, CLMI conditionally file the *amicus curiae* brief with this Motion for Leave to File.

Respectfully submitted,

By: /s/ Theodore L. Manos
Theodore L. Manos
SC Bar #8660
Robertson Hollingsworth Manos & Rahn, LLC
550 King Street, Suite 300
Charleston, SC 29403
(843) 723-6470
tlm@roblaw.net

*Attorney for Certain Underwriters at Lloyd's,
London and Certain London Market
Insurance Companies*

April 26, 2024

Charleston, South Carolina

RECEIVED

Apr 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefler Toal, Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs.....Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation;

General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking ump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....Defendants,

of which

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for Plaintiffs, Defendant, and the Receiver with the *Brief of Amici Curiae Certain Underwriters at Lloyd’s, London and Certain London Market Insurance Companies in Support of Appellant* and

the *Motion for Leave to File Brief of Amici Curiae Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies in Support of Appellant* as indicated herein below, by emailing a copy of the same at the following addresses:

Charles W. Branham, III
Jonathan M. Holder
Aaron D. Chapman
David C. Humen
Todd Barnes
Ka-Leya Q. Hardin
Dean Omar Branham Shirley LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
tbranham@dobslegal.com
jholder@dobslegal.com
achapman@dobslegal.com
dhumen@dobslegal.com
tbarnes@dobslegal.com
khardin@dobslegal.com
Attorneys for Plaintiffs

Theile B. McVey
Jamie D. Rutkoski
Kassel McVey Attorneys at Law
Post Office Box 1476
Columbia, South Carolina 29202-1476
tmcvey@kassellaw.com
jrutkoski@kassellaw.com
Attorneys for Plaintiffs

Stephen Lynwood Brown
Russell Grainger Hines
James D. Gandy, III
Clement Rivers, LLP
Post Office Box 993
Charleston, South Carolina 29402
sbrown@yctrlaw.com
rhines@yctrlaw.com

tgandy@ycrlaw.com
Attorneys for Defendant
John K. Chandler
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111
jchandler@rplegalgroup.com
Attorney for the Receiver

G. Murrell Smith, Jr.
Jonathan M. Robinson
Shanon N. Peake
Smith Robinson Holler Dubose and Morgan, LLC
2530 Devin Street
Columbia, South Carolina 29205
murrell@smithrobinsonlaw.com
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com
Attorneys for the Receiver

Respectfully submitted,

By: /s/ Theodore L. Manos
Theodore L. Manos
SC Bar #8660
Robertson Hollingsworth Manos & Rahn, LLC
550 King Street, Suite 300
Charleston, SC 29403
(843) 723-6470
tlm@roblaw.net

*Attorney for Certain Underwriters at Lloyd's,
London and Certain London Market
Insurance Companies*

April 26, 2024

Charleston, South Carolina

**ROBERTSON HOLLINGSWORTH
MANOS & RAHN, LLC**

ATTORNEYS AT LAW
550 King Street, Suite 300
Charleston, South Carolina 29403
(843) 723-6470 • Fax (843) 853-9045

www.roblaw.net

Dunn D. Hollingsworth
Theodore L. Manos
Paul R. Rahn
Jillian S. Barton

April 26, 2024

VIA EMAIL FILING

The Hon. Jenny A. Kitchings
Clerk of the Court of Appeals
Court of Appeals of South Carolina
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

RE: *John A. Tibbs v. Asbestos Corporation Limited*
Appellate Case No. 2023-001461

Dear Ms. Kitchings:

In accordance with Rule 262 of the South Carolina Appellate Court Rules, on Monday, April 29th, we will hand deliver the \$50 filing fee in connection with the *Brief of Amici Curiae Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies in Support of Appellant* and the *Motion for Leave to File Brief of Amici Curiae Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies in Support of Appellant* in the above referenced matter.

Respectfully submitted,

s/Theodore L. Manos

Theodore L. Manos, Esq.