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Jun 10 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 Nos.
2023-002006
2023-002007
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.; Anglo 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.

RETURN TO PETITIONS FOR REHEARING

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, 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. (“Respondent”), submits this return to the Petitions for Rehearing filed by Appellants in the above-captioned cases (collectively, the “Petitions”).¹

To briefly recap, Appellants sought premature, interlocutory review of a circuit court order entered on December 6, 2023, which rejected Appellants’ personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership (the “December 6 Interlocutory Order”). Respondent filed a motion to dismiss the appeals, and Appellants filed their respective returns. On May 9, 2024, “after careful consideration of the submissions from all parties,” Respondent’s motion to dismiss was granted. *See* Order attached hereto as **Exhibit A** (the “Order”).²

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);
- ESAB Corporation (Appellate Case No. 2003-002009);
- Charter Consolidated Ltd. (Appellate Case No. 2003-002010); and
- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002011).

² This outcome is consistent with the recent *and decisive* dismissals by the South Carolina Supreme Court and this Court of premature, similarly-situated, interlocutory appeals which too sought immediate review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. *See* Packet of Orders attached hereto as **Exhibit B**, 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.

A petition for rehearing must “state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221(a), SCACR. It may not be used to “present the points [Appellants] overlooked themselves or to have the case tried in the Court of Appeals a second time.” *Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Service, Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986). Appellants fail to meet this standard as they have not identified a point the Court of Appeals overlooked or misapprehended. To the contrary, in their Petitions, Appellants either rehash issues that were previously presented to and ruled upon by the Court or raise issues previously abandoned by Appellants that should not be considered now.³ Accordingly, this Court should deny the Petitions.

(Signature page follows)

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).

³ For example, Appellants did not argue in their returns to Respondent’s motion to dismiss that the December 6 Interlocutory Order was immediately appealable pursuant to S.C. Code § 14-33-330(2). Such argument has therefore been abandoned by Appellants and should not be considered now. *Checker Yellow Cab Co., Inc.*, 287 S.C. at 612.

Respectfully Submitted,

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APPEAL FROM RICHLAND COUNTY
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John A. Tibbs v. Asbestos Corporation Limited, et al

PROOF OF SERVICE

I, Lindsay A. Joyner., of Gullivan 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 **RETURN TO PETITIONS FOR REHEARING** was served on all other parties to this appeal on June 10, 2024, via email to their following counsel of record:

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Date: Monday, June 10, 2024 4:22:45 PM
Attachments: [06.10.24 Return to Petitions for Rehearing\(14492355,1\).pdf](#)
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All,

Please find served upon you, in compliance with the Supreme Court's Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), Respondent's Return to the Petitions for Rehearing in the above-referenced appellate cases, which we will be filing with the Court of Appeals of South Carolina momentarily and to 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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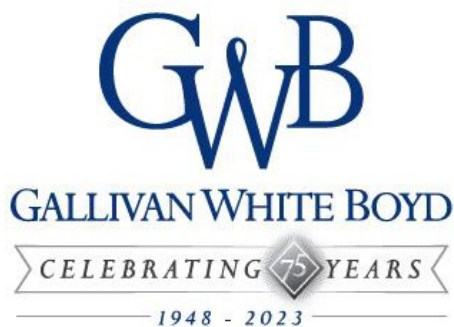
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All,

Please find served upon you, in compliance with the Supreme Court's Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), Respondent's Reply in Support of Motion to Dismiss Interlocutory Appeals (Specifically, The Appeal Filed By The Oppenheimer Appellants) 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



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