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July 2, 2024

VIA Electronic Filing – ctappfilings@ scourts.org
The Honorable Jenny Abbott Kitchings
Clerk of Court of Appeals of South Carolina
1220 Senate Street
Columbia, South Carolina 29201

Re: *John A. Tibbs and Margaret B. Tibbs v. Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas v. ArranCo US, LLC, et al.*
Civil Action No.: 2023-CP-40-01759
Appellate Case Nos.: 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011, 2024-000524, 2024-000916, 2024-001063, 2024001064, 2024-001065

Dear Ms. Kitchens,

On June 3, 2024 Appellants filed a Petition for Certiorari regarding their appeal from an interlocutory order granting the Receiver's motions to compel discovery responses of third-party defendants and the 30(b)(6) depositions of third-party defendants Arranco US, LLC and Central Mining & Investment Corporation Ltd. Respondents filed a Return on June 14, 2024 which, in part, outlined a series of successive improper appeals and filings in the instant case and brought to the Court's attention the long-standing egregious conduct of the parties and their counsel across the asbestos docket in multiple cases involving court-appointed Receivers. *See also* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011, 2024-000342, 2024-000348, 2024-000341, 2024-000337, 2024-000501, 2024-000501, 2024-000674.

It has come to the Receivers attention, that despite recent rulings by the United States District Court for the District of South Carolina and the Fourth Circuit Court of Appeals barring removal of a state court appointed receivership action, several of these same parties have now taken the extraordinary step of removing this case to the United States District Court for the District of South Carolina. *Cape PLC v. Anglo American PLC et al*, 3:24-cv-03771-MGL. This procedural gamesmanship in which the parties are once again attempting to improperly shop another forum to invalidate a Receivership is a violation of the long-established *Barton* doctrine,[1] which bars a party from litigating a claim of or against a court-appointed receiver without first obtaining leave of the appointing court. *See Porter v. Sabin*, 149 U.S. 473, 479–80 (1893). In a recent order remanding an action brought by the Payne & Keller Receivership to state court after Travelers and other insurers attempted to remove it, The Honorable Judge Donald C. Coggins explained:

> Albeit old law, *Porter* is clear that it is in the appointing court's discretion "to decide whether it will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere" and that the appointing court "may direct claims in favor of the corporation to be sued on by the receiver in other tribunals, or may leave him to adjust and settle them without suit." *Porter*, 149 U.S. at 479. *Porter* further states "[t]he reasons are yet stronger for not allowing a suit against a receiver appointed by a state court to be maintained, or the administration by that court of the estate in the receiver's hands to be interfered with, by a court of the United States, deriving its authority from another government, though exercising jurisdiction over the same territory." *Id.* at 480.
>
> Here, the receivership court has appointed a receiver who is attempting to preserve and collect assets of the defunct corporation as part of his fiduciary duty. This Court finds that *Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver to handle the administration of property; to allow this matter to continue in federal court would directly interfere with the exclusive jurisdiction of the receivership court over this dispute.

[1] *Barton v. Barbour*, 104 U.S. 126 (1881).

Protopapas v. Zurich Am. Ins. Co., C/A No. 3:21-cv-04086-DCC, 2023 WL 2206640, 2023 U.S. Dist. LEXIS 31931, at *7–8 (D.S.C. Feb. 24, 2023). Travelers appealed the district court's order to the United States Court of Appeals for the Fourth Circuit, and the Fourth Circuit dismissed the appeal. *See Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 360 (4th Cir. 2024). In affirming that the federal court lacked jurisdiction over the state court appointed receiver, the Court explained:

> Thus, when applying the *Barton* doctrine, the district court plausibly concluded that a federal court lacks jurisdiction over a state receivership or a state-court appointed receiver with respect to assets of the receivership because the state court has exclusive jurisdiction over the assets of the receivership. Exercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an "arm" or "executive" of the state-receivership court, would infringe on the state court's control over the receivership assets — its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction, and indeed we have confirmed as much. *See, e.g.*, *Conway*, 64 F.4th at 545 (noting that "*Barton* concerns subject-matter jurisdiction"); *McDaniel*, 668 F.3d at 156 (noting that "[t]he Supreme Court established in *Barton* that before another court may obtain subject-matter jurisdiction over a suit filed against a receiver for acts committed in his official capacity, the plaintiff must obtain leave of the court that appointed the receiver").

Id. at 13.

The Fourth Circuit ruling has not deterred the parties or their counsel from continuing to ignore precedent. On June 28, 2024, in the wake of (1) multiple failed appeals of various state court interlocutory orders, (2) the Receiver's request for sanctions in yet another improper appeal and their Petition for Certiorari in the South Carolina Supreme Court, and (3) an Order setting the trial date of this case for December 9, 2024, Appellants removed this case to federal court.

Incredibly, the same counsel which represented Travelers in the *Barton* doctrine appeal to the above-mentioned Fourth Circuit case is now representing a party in the now-removed case and consented to the improper removal of this state court appointed Receivership action in direct violation of the *Barton* doctrine and without leave of the state receivership court that appointed this Receiver. *Tibbs et al, v. Cape, PLC, individually and as successor in interest to Cape Asbestos Company Ltd., by and through its duly appointed Receiver Peter D. Protopapas et al v. Anglo American PLC et al.*, Civil Action No. 2023-CP-40-01759 in the Richland County Court of Common Pleas, *Cape PLC v. Anglo American PLC et al*, 3:24-cv-03771-MGL.[2] A Motion to Remand is forthcoming. However, due to the number of (thus far unsuccessful) appeals of multiple interlocutory orders which have clogged our courts and are still pending in various stages at the Court of Appeals and in the Supreme Court, we are notifying the courts of this latest development.

Sincerely,

Jonathan M. Robinson

JMR/dlf

cc: Counsel of record via email
Chief Justice Toal (Ret.) via E-filing (Civil Action No.: 2023-CP-40-01759)

[2] Like prior instances of misnaming orders on appeals, the removing parties have unilaterally attempted to recaption the action in the removal.