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Jul 17 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. 2024-000501
Circuit Court Case Nos. 2022-CP-40-05543, 2023-CP-40-03108

Michael David Link and Sandra Strickland Link.....Plaintiffs,

v.

4520 Corp., Inc., ABB Inc. Amentum Environment & Energy, Inc.,
Armstrong International, Inc., Asbestos Corporation Limited, AT&T Corp,
Atlas Turner Inc., Bahnson, Inc., BASF Catalysts LLC, BASF Corporation,
Beaty Investments, Inc., Bechtel Corporation, Bellsouth, LLC, Bellsouth
Telecommunications, LLC, 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, In., Great Barrier
Insulation Co., Grinnell LLC, Heat & Frost Insulation Company, Inc., Henry
Pratt Company, LLC, Howden North America Inc., ITT LCC, J. & L.
Insulation, Inc., K-MAC Services, Inc., Kohler Co., Metropolitan Life
Insurance Company, Michelin Corporation, Michelin North America, Inc.,
Milliken Company, Nokia of America Corporation, Occidental Chemical
Corporation, The Okonite Company, Inc., Paramount Global, PECW Holding
Company, Plastics Engineering Company, Presnell Insulation Co., Inc.,
Prysmian Cables and Systems US, LLC, Raytheon Technologies Corporation,
Redco Corporation, Riley Power In., 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., 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.

4520 Corp., Inc., ABB Inc. Amentum Environment & Energy, Inc., Armstrong International, Inc., Asbestos Corporation Limited, Atlas Turner Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel Corporation, The Bonitz Company, Brenntag North America, Inc., Brenntag Specialties, LLC, Canvas CT, LLC, Carboline Company, Carrier Corporation, Celanese Corporation, CNA Holdings LLC, Cooper Crouse-Hinds, LLC, Covil Corporation, Daniel International Corporation, Eaton Corporation, 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, Goulds Pumps LLC, Graybar Electric Company, In., Great Barrier Insulation Co., Grinnell LLC, Henry Pratt Company, LLC, Howden North America Inc., ITT LCC, K-MAC Services, Inc., Metropolitan Life Insurance Company, Occidental Chemical Corporation, Paramount Global, PECW Holding Company, Plastics Engineering Company, Presnell Insulation Co., Inc., 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., Spence Engineering Company, Inc., Spirax Sarco, Inc., 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, Westrock Company, The William Powell Company, Zurn Industries, LLC.....Defendants,

of which

Michael David Scott, Sandra Strickland Link, Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley Potter, deceased, and Asbestos Corporation Limited, by and through its court-appointed Receiver, Peter D. Protopapas, are the.....Respondents,

and

Certain Underwriters at Lloyd’s, London, Certain London Market Insurance Companies, and Resolute Management Inc. are the.....Appellants.

**MOTION FOR LIMITED REMAND OF NONPARTY APPELLANTS
CERTAIN UNDERWRITERS AT LLOYD’S, LONDON,
CERTAIN LONDON MARKET INSURANCE
COMPANIES, AND RESOLUTE MANAGEMENT INC.**

Nonparty appellants 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 policies insuring Asbestos Corporation Limited (“ACL”),* and Resolute Management Inc. (“Resolute”), move for a limited remand in this matter. In support of this motion, CLMI and Resolute state the following:

1. This appeal challenges the trial court’s Order on Plaintiffs’ and Receiver’s Motion for Sanctions and Contempt Against Resolute Management and Certain Underwriters of Lloyd’s of London, entered on March 22, 2024 (the “Sanctions Order”). The Sanctions Order holds in contempt and sanctions CLMI—insurers that issued policies obligating them to indemnify ACL for certain liabilities—and Resolute—CLMI’s third-party claims administrator—for their alleged violation of earlier orders entered by the trial court. In particular, the trial court found that CLMI and Resolute had failed to cooperate with the court-appointed Receiver for ACL in connection with Plaintiffs’ claims against ACL and

* 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.

failed to appear at a mediation of Plaintiffs' claims with adequate settlement authority. Order of 3/22/24, pp. 6–7.

2. After CLMI and Resolute filed their notices of appeal, Plaintiffs settled their claims against ACL. The trial court approved a settlement of *Donaghy* Plaintiff's claims against ACL on June 28, 2024. *See* S.C. Code § 15-51-41 (requiring court approval for settlement of wrongful death or survival actions). And pursuant to the settlements in both *Link* and *Donaghy*, Plaintiffs have now dismissed their claims against ACL.

3. Because the trial court's Sanctions Order was intended to force CLMI's and Resolute's cooperation with ACL's court-appointed Receiver and their participation in court-ordered mediation in connection with Plaintiffs' claims against ACL—and because those claims have now been settled and dismissed—the trial court's sanctions have abated as a matter of law. *See* Initial Br. pp. 10–12. Vacatur of the Sanctions Order is therefore required. *Id.*

4. Pursuant to Rule 60(b), SCRPC, leave to make a motion to vacate must be obtained from the appellate court during the pendency of an appeal. CLMI and Resolute therefore respectfully request that the Court grant a limited remand to allow the trial court to consider a joint motion from CLMI, Resolute, Plaintiffs, and the Receiver to vacate the Sanctions Order.

5. Pursuant to Rule 240(a), SCACR, this Court may issue a limited remand to the trial court for purposes of considering the joint motion.

6. To promote judicial economy and to facilitate the efficient resolution of this appeal, CLMI and Resolute request that the Court grant the motion for limited remand. If a limited

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Appeal from Richland County
Court of Common Pleas
Jean Hoefer Toal, Circuit Court Judge

Appellate Case No. 2024-000501
Circuit Court Case No. 2023-CP-40-03108

Michael David Link and Sandra Strickland Link

Plaintiffs,

v.

4520 Corp, Inc., et al,

Defendants,

Of which **nonparties** Certain Underwriters at Lloyd’s, London and certain London market insurance companies subscribing severally (not jointly) to certain excess policies insuring Asbestos Corporation Limited (“ACL”) (“Certain London Market Insurers” or “CLMI”)¹ are

Appellants.

PROOF OF SERVICE

I, the undersigned, of the law offices of Robertson Hollingsworth Manos & Rahn, LLC, attorney for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the Motion specified below by e-mailing them at the addresses below:

Motion: Motion for Limited Remand of Nonparty Appellants Certain Underwriters at Lloyd’s, London, Certain London Market Insurance Companies, and Resolute Management Inc.

¹ 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, and now known as Tenecom Ltd.

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July 17, 2024

Charleston, South Carolina