THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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.
2024-001063
2024-001064
2024-001065

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.; Lowserve 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, 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, Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation are the

Appellants.

MOTION TO DISMISS APPEALS OF INTERLOCUTORY ORDERS

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, ("Cape") by and through its duly appointed Receiver Peter D. Protopapas ("the Receiver"), respectfully requests this Court dismiss the June 21, 2024 and June 24, 2024 Notices of Appeal (the "June 2024 Notices") filed by Mohed Altrad and Altrad Investment Authority S.A.S. (together, "Altrad Owners Third-Party Defendants"); Arranco US LLC ("Arranco"), Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (together, "Altrad Sparrows Third-Party Defendants"); and Central Mining & Investment Corporation Ltd. ("Central Mining"), Charter Consolidated Ltd., and ESAB Corporation (together, "Charter Third-Party Defendants") (collectively, "Third-Party Defendants" or "Appellants"). The Receiver also respectfully requests that while the Court considers this Motion to Dismiss, it holds in abeyance all other briefing and submission deadlines.

As with their failed second set of notices of appeal, which this Court dismissed as interlocutory on April 17, 2024, Third-Party Defendants' June 2024 Notices once again contravene well-established case law governing appealability and seek inappropriate, interlocutory review of orders granting discovery sanctions in the form of pre-admitting exhibits, drawing certain adverse inferences, and awarding reasonable attorney's fees and costs. These orders of the circuit court do **not** hold any entity in contempt. Indeed, the circuit court specifically noted that the adverse inferences are merely rebuttable presumptions that are subject to evidentiary challenge by Appellants. Thus, contrary to Appellants' arguments, the adverse inferences entered by the circuit court as part of discovery sanctions do not enter any irrefutable negative inferences that effectively

"determine the action" or effectively strike portions of Appellants' pleadings. The circuit court further emphasized that the more severe sanctions, such as striking Appellants' pleadings or holding them in default, are not the subject of its orders and they should not be interpreted as tantamount thereto. In sum, the circuit court's orders do not hold Appellants in contempt and do not prevent Appellants from mounting a defense should they choose to do so. These orders merely impose discovery sanctions, and South Carolina law is clear that orders addressing discovery sanctions are not immediately appealable. *See, e.g.*, *Fam. Servs. Inc. v. Inman*, No. 2020-001132, 2023 WL 5096715, at *7 (S.C. Ct. App. Aug. 9, 2023) ("declin[ing] to address the issue of discovery sanctions because orders addressing discovery sanctions are not immediately appealable") (citing *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008)).

BACKGROUND

As the June 2024 Notices are the third appeal by these Third-Party Defendants in less than a year asking this Court to review interlocutory orders issued by Chief Justice Toal (Retired), this newest appeal appears to be the latest chapter in the playbook of entities attempting to delay and frustrate the obligations of various court-appointed receivers throughout this State. Having no luck with appealing other non-appealable, interlocutory orders for purposes of delaying litigation obligations, these insurance related entities—such as Appellants—have shifted their effort to disguising orders that are commonly known to be interlocutory with new names to try to create appealability. Despite the underlying orders lacking appealability at this juncture, Appellants attempt to fit a square peg into a round hole by claiming:

> (1) the two orders contained findings that are contempt; (2) the entering of adverse inferences and presumptions of fact effectively "determines the action"; (3) the entering of adverse inferences and presumptions of facts effectively struck out portions of the [Appellants'] answer, including their first defense; (4) the two orders demonstrate the further refusal to enter the requested injunction

> required as a matter of law; and (5) South Carolina appellate authority is clear that orders such as these *must* be appealed to preserve the right to appellate review.

(Appellants' June 2024 Notices). However, Appellants' attempt to make this matter immediately appealable is without merit.

The underlying orders stem from the Receiver's efforts to move this litigation forward despite Appellants' best efforts to the contrary. This case was previously set for a bench trial during the April 15, 2024, term of court. However, trial was continued during the April 10 pre-trial hearing because Appellants and other Third-Party Defendants had refused to provide discovery to the Receiver to prepare this case for trial.

The Receiver had previously filed motions to compel the outstanding discovery on January 12, 2024. The circuit court granted the Receiver's motions on March 12, 2024 (the "March 12 Order"). Pursuant to the March 12 Order, Appellants and other Third-Party Defendants were required, *inter alia*, to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests within 14 days and to begin producing documents in response to the Receiver's Requests for Production the same day. They did not.

A series of motions practice ensued in light of Appellants' refusal to participate in discovery. On April 3, 2024, the Receiver filed a Motion to Pre-Admit Exhibits. Additionally, on April 5, 2024, and April 12, 2024, the Receiver filed a Motion for Adverse Inference and a Motion for Sanctions, respectively, against Appellants. On May 23, 2024, the circuit court issued two orders addressing these motions (the "May 23 Orders").

i. Order Granting the Receiver's Motion to Pre-Admit Exhibits

The circuit court granted the Receiver's Motion to Pre-Admit Exhibits, which sought a ruling that all exhibits included on the Receiver's trial exhibit list (submitted as Exhibit A to the Motion) be admitted and deemed authentic (the "May 23 First Order"). In doing so, the circuit

court explained in detail the efforts the Receiver went through in attempting to prepare his case for trial. (May 23 First Order at 3-4.) Moreover, the circuit court explained in detail Appellants' efforts to the contrary. (*Id*. at 4, 6-7.) The circuit court acknowledged that it is well established in South Carolina that judges sitting without a jury have wide latitude "to admit all evidence" and then "evaluate the evidence and ascertain the truth." (*Id*. at 4 (citation omitted).) The circuit court found that "[j]udicial economy is best served by allowing judges the ability to use their training, skill, and experience to make these evidentiary determinations while considering the legal issues in a case," and ultimately held that here, "[p]re-admitting evidence will save this Court and the parties the time and burden of lawyers arguing about exhibits during the trial day." (*Id*. at 5, 6.)

The circuit court further held that its "determination that all of the Receiver's trial exhibits are authentic" is an appropriate sanction for Appellants' "persistent and baseless refusal . . . to participate in the discovery process" when there is "no active stay of discovery in this case." (*Id*. at 6, 7.) The circuit court determined that this sanction was justified because Appellants' "discovery misconduct" resulted in the Receiver being "unable to authenticate documents that otherwise would have been authenticated under Rule 901 during the normal course of discovery." (*Id*. at 7.)

ii. Order Granting the Receiver's Motion for Sanctions and Motion for Adverse Inference

The circuit court granted the Receiver's Motion for Adverse Inference and Motion for Sanctions, which requested certain sanctions for Appellants' ongoing discovery misconduct, including (1) that certain inferences be drawn with respect to Appellants, including with respect to their alleged current and historical statuses as the alter ego(s) of Cape, and alleged unjust enrichment from Cape's liability-avoidance scheme, and (2) for an award of fees and costs associated with bringing these Motions (the "May 23 Second Order"). To contextualize its findings and adverse inferences made in the May 23 Second Order, the circuit court first summarized the

allegations in the Receiver's Third-Party Complaint regarding the "remarkable system of avoiding responsibility for the harm caused by Cape's asbestos over a period of decades," and the alleged interconnected history of Cape and Appellants. (May 23 Second Order at 4.) The circuit court then detailed Appellants' refusal to provide any discovery to the Receiver to prepare this case for trial, as well as the Receiver's ongoing diligent efforts to obtain such discovery to get this case ready for trial. (*Id*. at 10-13.) The circuit court explained that the legal basis for Appellants' refusal to participate in discovery and comply with the circuit court's prior orders compelling discovery was based solely on Appellants' arguments that Rule 205, SCACR, posed a jurisdictional bar preventing this action from continuing because by simply appealing the circuit court's orders denying their motions to dismiss and dissolve the receivership, they could deprive the circuit court of jurisdiction for an indeterminate time period. (*Id*. at 11-12.) The circuit court found that Appellants' purported justification for their discovery misconduct was "legally untenable" because "[t]hese very same arguments . . . have been repeatedly dismissed by the Court of Appeals and Supreme Court" identifying those attempts to appeal as interlocutory and not immediately appealable under South Carolina law. (*Id*. at 12 and n.5.) The circuit court emphasized that Appellants' claimed right of non-participation in discovery was "frivolous and flatly inconsistent with those recent, directly applicable decisions of the Court of Appeals and Supreme Court—while appearing to further an improper purpose, *i.e*., to delay progress in this matter."(*Id*. at 13.)

The circuit court acknowledged that South Carolina law provides that "the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him." (*Id*. at 15 (citation omitted).) The circuit court found that Appellants' continued discovery misconduct amounted to "bad faith, willful

disobedience, and gross indifference to the rights of the Receiver and [the circuit court's] management of its docket." (*Id*. at 15.) Based on this, the circuit court held that certain adverse inferences were warranted against Appellants on facts and matters underlying the Receiver's claims. (*Id*. at 15-16.) Specifically, the circuit court drew the adverse inference that each of Appellants "was at relevant times the alter ego of Cape, requiring piercing of the corporate veil," and that each of them was "responsible for or has benefitted unjustly from Cape's liability-avoidance scheme." (*Id*. at 16, 27.) Importantly, the circuit court emphasized that "these rebuttable inferences are subject to evidentiary challenge by these parties in these proceedings." (*Id*. at 16.) The circuit court further clarified that "this sanction as an intermediate form of relief, which stops short of more severe sanctions, such as striking their pleadings or holding them in default." (*Id*.)

The circuit court also held that, in light of Appellants' failure to show substantial justification for their discovery misconduct, as well as the circuit court's finding that it amounted to "bad faith, willful disobedience, and gross indifference to the rights of the Receiver and the [circuit court's] management of its docket," an award of reasonable attorneys' fees and costs in favor of the Receiver was proper as a sanction against Appellants for the "litigation activities to date necessary for addressing these Third-Party Defendants' frivolous positions and proceedings," culminating in the Receiver's Motions. (*Id*. at 32-33.)

ARGUMENT

The Court should grant the Receiver's Motion to Dismiss because neither of the two orders appealed by Appellants are immediately appealable.

A party's right to appeal arises from and is governed by statute. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Traditionally, an appeal may be pursued only after the entry of final judgment. *See id.* "A final judgment is one that ends the action and

leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005).

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code]." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 6, 630 S.E.2d at 467. "Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." *Id.* Section 14-3-330 is "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals." *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. To be sure, "[p]iecemeal appeals" are disfavored in South Carolina. *See Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

Pursuant to section 14-3-330, appellate courts have jurisdiction over interlocutory orders only if the interlocutory order (1) involves the merits; (2) affects a substantial right; or (3) grants, continues, modifies, or refuses an injunction or receivership. "An order involves the merits when it finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense," *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (citation and internal quotation marks omitted). An order affects a substantial right when it "(a) in effect determines the action and presents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial, or (c) strikes out an answer or any part thereof or any pleading in any action," S.C. Code Ann. § 14-3-330(2). None of those scenarios exist here, and neither is there any "refusal to enter the requested injunction" as Appellants purport.

I. The circuit court's discovery sanctions orders are not immediately appealable, and they contain no contempt findings.

Appellants claim the circuit court's orders are immediately appealable because certain findings therein are allegedly tantamount to contempt findings. Appellants' argument, however, is without merit.

South Carolina law is clear that "discovery 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." *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008). "[O]rders addressing discovery sanctions are not immediately appealable." *Fam. Servs. Inc. v. Inman*, No. 2020-001132, 2023 WL 5096715, at *7 (S.C. Ct. App. Aug. 9, 2023) (citing *Grosshuesch*, 377 S.C. at 30, 659 S.E.2d at 122 (declining to address an assignment of error to the circuit court's denial of a request to impose sanctions on a party because the question was not immediately appealable)). *See also Johnson ex rel. D'Andre G. v. Chaudhry*, No. 2013-UP-176, 2013 WL 8508086, at *1 (S.C. Ct. App. May 1, 2013) (dismissing appeal of circuit court's "discovery sanction order allowing [party] to present only one expert witness at trial on issues of liability" because this decision was "not immediately appealable"). To "challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding." *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014).

Here, contrary to Appellants' arguments, the circuit court's May 23 Orders merely impose discovery sanctions in the form of pre-admitting exhibits, drawing certain adverse inferences, and awarding reasonable attorney's fees and costs. It is well-established in South Carolina that such interlocutory orders addressing discovery sanctions are not immediately appealable. Further, the May 23 Orders simply do not hold any Appellant in contempt and clearly do not contain any

contempt findings. Indeed, the circuit court explicitly stated that the discovery sanctions in these orders is "an intermediate form of relief, which stops short of more severe sanctions, such as striking their pleadings or holding them in default." (May 23 Second Order at 16.) The circuit court went on to clarify that while such harsher sanctions may eventually be warranted if Appellants continue to refuse to participate in discovery and comply with the circuit court's orders, "those sanctions are not the subject of this Order, nor should this Order be interpreted as tantamount thereto." (*Id*.) Appellants cannot simply rebrand unappealable orders imposing discovery sanctions into appealable contempt orders where the orders do not in fact contain any contempt findings.

In addition, the circuit court's award of reasonable attorneys' fees and costs in favor of the Receiver as a sanction for Appellants' discovery misconduct is also not immediately appealable. The South Carolina Court of Appeals held just last year that the "award of attorney's fees and costs as a discovery sanction . . . is interlocutory and not immediately appealable." *Richardson v. Halcyon Real Est. Servs., LLP*, 439 S.C. 419, 424-25, 887 S.E.2d 153, 156 (Ct. App. 2023) ("We conclude the award of attorney's fees and costs as a . . . discovery sanction neither involves the merits of the case nor affects a substantial right and is therefore not immediately appealable.").

II. The adverse inferences entered by the circuit court as part of discovery sanctions do not "determine the action" and do not strike portions of Appellants' Answers.

Appellants claim the circuit court's orders are immediately appealable because the entering of adverse inferences and presumptions of fact herein purportedly effectively "determines the action" and struck out portions of Appellants' Answers. This argument likewise fails.

The circuit court's May 23 Orders specifically held that the adverse inferences entered therein as part of discovery sanctions are "rebuttable inferences [that] are subject to evidentiary challenge by" Appellants. (May 23 Second Order at 16.) Thus, the adverse inferences drawn by the circuit court are not tantamount to "determining the action" that would affect a substantial

right. Moreover, South Carolina law is clear that when the adverse inference "presumption is drawn, it cannot be treated as independent evidence of a fact otherwise unproved, but can only be considered in determining the credibility or probative force of the evidence presented." *Baker v. Port City Steel Erectors, Inc.*, 261 S.C. 469, 476, 200 S.E.2d 681, 683 (1973). "The fact that the unfavorable inference may be drawn ***does not require that the jury draw it***. It is a matter for the jury to say whether the failure to produce the . . . evidence warrants the inference that it would be unfavorable." *Id*. at 476, 200 S.E.2d at 683-84 (emphasis added). Thus, "the [adverse] inference has the effect only of authorizing the jury to give greater weight to the evidence of the adverse party, or to give less weight to the evidence of the party who had failed to call the witness, than it might otherwise have done." *Id*. at 476, 200 S.E.2d at 683 (citation and internal quotation marks omitted). *See also Stokes v. Spartanburg Reg'l Med. Ctr.*, 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct. App. 2006) (holding that the following "language reflect[ed] the law of South Carolina and should have been charged [to the jury] based on the evidence": "I charge you that when a party fails to preserve material evidence for trial, it is for you to determine whether the party has offered a satisfactory explanation for that failure. If you find the explanation unsatisfactory, you are permitted—***but not required***—to draw the inference that the evidence would have been unfavorable to the party's claim." (emphasis added)).

The circuit court's ruling that the exhibits on the Receiver's trial exhibit list be deemed admitted and authentic also does not "determine the action" nor affects a substantial right. As the circuit court explained in the May 23 First Order, South Carolina judges have wide latitude to admit all evidence and then evaluate it to ascertain the truth. (May 23 First Order at 4.) Unlike a juror, a judge is uniquely situated to separate the admissible from the inadmissible even if the judge

has heard both, and there is no need to keep inadmissible evidence from the fact finder to prevent prejudice. (*Id*. at 5.)

Further, the adverse inferences drawn by the circuit court do not effectively strike portions of Appellants' Answers. Indeed, the circuit court expressly stated that its sanctions order "***stops short of*** more severe sanctions, ***such as striking [the parties'] pleadings*** or holding them in default," and explicitly clarified that "those sanctions are ***not the subject of this Order***, nor should this Order be interpreted as tantamount thereto." (May 23 Second Order at 16 (emphasis added).) Appellants cannot circumvent South Carolina's threshold for interlocutory appeals by inaccurately portraying the orders as tantamount to striking their Answers, particularly when the circuit court itself clearly stated that its sanctions are not striking any party's pleadings. Moreover, as explained above, the circuit court specifically explained that the adverse inferences are simply rebuttable presumptions that Appellants can refute through evidentiary challenge. Simply put, contrary to Appellants' claim, the circuit court did **not** enter irrefutable negative inferences that strike out portions of Appellants' pleadings and defenses. Instead, the circuit court's orders leave Appellants entirely free to mount any defense they want should they choose to do so.

III. Appellants are not entitled to injunctive relief.

Appellants claim the circuit court's orders are immediately appealable because they supposedly demonstrate the further refusal to enter the requested injunction required as a matter of law. This assertion is meritless.

As they did in their failed second set of notices of appeal, Appellants apparently again attempt to brazenly mischaracterize the circuit court's discovery sanctions orders as ones denying Appellants' requests for an injunction. However, as was the case with the circuit court's March 12 Order, the circuit court's ***May 23 Orders contain no ruling on any request for an injunction***.

Footnote 1 of the March 12 Order expressly stated that Third-Party Defendants' eleventh-hour insertion of requests for "injunctive relief" in their responses to the Motions to Compel were not under submission yet for the circuit court's consideration, and the March 12 Order did not take up or address those requests. Indeed, Appellants' so-called requests for injunctive relief ***continue to remain pending*** in the circuit court, and the May 23 Orders similarly did not address those requests in any way. Thus, once again, any effort by Appellants to rope in undecided requests for injunctive relief is completely unfounded for purposes of this appeal.

CONCLUSION

This appeal is ripe for dismissal. It is not an authorized interlocutory appeal but rather another attempt by these Third-Party Defendants to delay the case, neglect their legal obligations to participate in discovery, and avoid going to trial on the underlying issues. *See Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 14 (2000) (noting "the avoidance of a trial is not a sufficient reason to justify immediate appellate review"). The circuit court's May 23 Orders that are the subject of the June 2024 Notices are not immediately appealable, and the Court should refuse to expand the narrow construction of immediately-appealable, interlocutory orders in S.C. Code § 14-3-330 and interpretive case law to allow continued evasion of even the most basic discovery. Accordingly, pursuant to Rule 240 of the South Carolina Appellate Court Rules, the Receiver respectfully requests that the Court dismiss the June 2024 Notices filed by these Third-Party Defendants.

Respectfully Submitted,

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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

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2024-001063
2024-001064
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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 APPEALS OF INTERLOCUTORY ORDERS** was served on all other parties to this appeal on August 16, 2024, via email to their following counsel of record:

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August 16, 2024

Lindsay Joyner

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Subject: Tibbs v. Asbestos Corporation Limited et al, App. Case Nos.: 2024-001063, 2024-001064, 2024-001065 [IMAN-IMANMAIN.FID1086139]
Attachments: MTD June Notices.pdf; 08.16.24 POS.pdf

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 Motion to Dismiss Appeals of Interlocutory Orders 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. The filing fee will be sent separately via US Mail.

Please let me know if you have any questions.

Thanks,
Lindsay

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1948 - 2023

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