

Reply To: Columbia

August 30, 2024

VIA EMAIL ONLY

The Honorable Patricia A. Howard
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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Aug 30 2024

S.C. SUPREME COURT

Re: *John A. Tibbs v. Asbestos Corporation Limited, et al.*
Appellate Case Nos. 2023-002009, 2023-002010, 2023-002011

Dear Ms. Howard:

I represent the Receiver, Peter D. Protopapas, in the above-referenced appeals and am in receipt of the letter from Vic Rawl requesting a seven-day extension to file a Petition for Writ of Certiorari in Appellate Case No. 2023-002009 on behalf of his clients Chater Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.¹

While the Receiver is aware that the Court routinely grants extensions, the Receiver respectfully objects to the extension request as another attempt to delay this matter. The Court of Appeals dismissed these appeals as interlocutory and not immediately appealable on May 9, 2024, and denied rehearing on June 18, 2024. The Petition for Writ of Certiorari should have been due on July 18, 2024. However, Appellants were successfully able to *delay* the certiorari deadline by consenting to an improper removal of the action on June 28, 2024, nearly a year after the third-party complaint was filed, despite the Fourth Circuit's recent decision explaining why these receivership cases may not be removed. I have enclosed Judge Lewis's August 13, 2024 Order granting the Receiver's motion to remand the case and finding the removal was not proper as well

¹ Mr. Rawl's request references only Appellate Case No. 2023-002009 which involves one appellant—ESAB Corporation. However, the other clients included in the request, Charter Consolidated Ltd. and Central Mining & Investment Corporation Ltd., are simultaneously pursuing separate appeals of the same order. These appeals have been assigned Appellate Case Nos. 2023-002010 and 2023-002011. Thus, it appears Appellants are requesting an extension in all three appeals.

as the Fourth Circuit decision.² The improper removal succeeded in delaying this appeal for a month and a half. Appellants were aware that their Petition for Writ of Certiorari would be due once the case was remanded. Now, they seek to delay the filing of the Petition for another week.

It is also important to note that a trial is scheduled in this case for December 9, 2024. It is clear Appellants' purpose in consenting to the improper removal and requesting an extension here is to delay the appeal to avoid trial. As shown in the enclosed discovery responses and objections, Appellants are using the pendency of their improper interlocutory appeals as an excuse to refuse to participate in discovery despite (1) the Court of Appeals' rulings in the *Childers* case that receivership actions and the receivership court may proceed during the pendency of an appeal from a receivership case despite Rule 205 arguments raised by the appellants (September 8, 2023 Order and November 21, 2023 Order in Appellate Case No. 2023-000727), (2) this Court's order in *Childers* dismissing an appeal of a similar order denying a motion to dismiss and dissolve a receivership as interlocutory and not immediately appealable (March 27, 2024 Order in Appellate Case No. 2023-000727), and (3) South Carolina case law confirming that Rule 205 does not stop proceedings in the circuit court when a party appeals an interlocutory order that is not immediately appealable (*See pp. 31–37 of the Receiver's Return to the Petition for Writ of Certiorari filed by Appellants in Appellate Case No. 2024-000916*).

Additionally, while Appellants have three appeals pending from the circuit court's order denying the third-party defendants' motions to dismiss and to dissolve the receivership, there are a barrage of other improper appeals that have been launched in this case.

There are two other appeals pending from the same order by additional third-party defendants. *See* Appellate Case Nos. 2023-002006, 2023-002007.

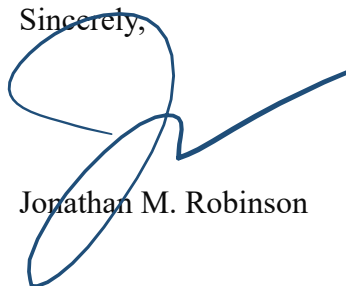
There are an additional four appeals pending from these appellants of other interlocutory orders of the circuit court in this case. *See* Appellate Case Nos. 2024-000916, 2024-001063, 2024-001064, and 2024-001065.

Thus, there are currently nine appeals pending from interlocutory orders of the circuit court involving this third-party action alone. In light of the numerous appeals of interlocutory orders, the delay of these appeals due to the improper removal, the refusal of Appellants to participate in this case despite the appellate courts' continued rejection of these appeals and improper tactics which continue to frustrate the Receiver Court and the court-appointed Receiver's ability to fulfill his duties, and the upcoming trial which the Defendants have continually delayed, the Receiver

² This Court is also very familiar with the South Carolina court-appointed Receiver for Payne & Keller due to improper state court appeals of an interlocutory order which this Court dismissed, confirming that orders denying a motion to dismiss and/or dissolve a receivership are not immediately appealable. *See* March 27, 2024 Order in Appellate Case No. 2023-000727. Incredulously, Appellants are continuing to pursue the same interlocutory issues in this case and others.

respectfully objects to the extension request. The Receiver requests the Court to deny the extension request and for such other relief as may be deemed appropriate.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a horizontal line that extends to the right and then curves back down.

Jonathan M. Robinson

JMR/dlf

Enclosures

cc: All counsel of record via email
Court of Appeals via email