

Reply To: Columbia

September 3, 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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Sep 03 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. As the Court is aware, on behalf of the Receiver, we submitted an August 30, 2024 letter objecting to Vic Rawl's letter requesting a seven-day extension to file a Petition for Writ of Certiorari in Appellate Case No. 2023-002009.¹ In the Receiver's objections, we noted that there were 9 different appeals filed in the third party action alone. I write to inform the Court that number has now increased. Shortly after submitting our objections, Mr. Rawl (and others listed below) filed 3 more appeals in the case on Friday afternoon:

1. Notice of Appeal on behalf of Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (Vic Rawl of Gordon Rees),
2. Notice of Appeal from the Altrad Defendants (Todd Carroll of Womble Dickson), and
3. Notice of Appeal on behalf of Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC (Steve Pugh of Richardson Plowden).

Couched as mode of trial appeals, the latest round of appeals are akin to those employed by Penn National which successfully delayed the December 12, 2022 scheduled trial in that case for nearly a year. The Court of Appeals dismissed Penn National's appeal, and, on November 7, 2023, this Court denied the Petition for Certiorari in *Covil Corp. v Penn. Nat'l Mut. Cas. Ins. Co.*, 2023-001079. That case was finally tried on November 27 and 28, 2023, and now is on appeal again.

¹ Mr. Rawl's Reply to the Receiver's objections confirms that the 7 (seven) day extension is being sought by Appellants in all three appeals (2023-002009; 2023-002010; 2023-002011).

The trial in this case is scheduled for December 9, 2024. It is clear Appellants' purpose in consenting to the improper removal, pursuit of improper appeals, and request for an extension here is to delay and avoid trial. To better illustrate the number and nature of appeals filed in this case, please see the chart below:

Appellate Case No.	Receivership involved	Underlying Case	Appealing Party	NOA filed	Order appealed	Status
2023-002007	Cape	Tibbs 2023CP400 1759	ArranCo, Hawk Bidco, Sparrows Offshore	12/18/2023	12/6/23 Order denying motion to dissolve receivership and dismiss for lack of jurisdiction	COA
						COA dismissed 5/9/2024 and denied rehearing 7/1/2024
						Was held in abeyance due to improper removal.
2023-002006	Cape	Tibbs 2023CP400 1759	Altrad Investment Authority, Mohed Altrad	12/18/2023	12/6/23 Order denying motion to dissolve receivership and dismiss for lack of jurisdiction	COA
						COA dismissed 5/9/2024 and denied rehearing 7/1/2024
						Was held in abeyance due to improper removal.
2023-002011	Cape	Tibbs 2023CP400 1759	Central Mining & Investment Co	12/18/2023	12/6/23 Order denying motion to dissolve receivership and dismiss for lack of jurisdiction	COA
						COA dismissed 5/9/2024 and

						denied rehearing 6/18/2024
						Was held in abeyance due to improper removal. <i>Now subject to Rawl extension request to file for Cert.</i>
2023-002010	Cape	Tibbs 2023CP400 1759	Charter Consolidated Ltd	12/19/2023	12/6/23 Order denying motion to dissolve receivership and dismiss for lack of jurisdiction	COA
						COA dismissed 5/9/2024 and denied rehearing 6/18/2024
						Was held in abeyance due to improper removal. <i>Now subject to Rawl extension request to file for Cert.</i>
2023-002009	Cape	Tibbs 2023CP400 1759	ESAB Corporation	12/19/2023	12/6/23 Order denying motion to dissolve receivership and dismiss for lack of jurisdiction	COA
						COA dismissed 5/9/2024 and denied rehearing 6/18/2024
						Was held in abeyance due to improper removal. <i>Now subject to Rawl extension request to file for Cert.</i>

2024-000524	Cape	Tibbs 2023CP400 1759	Altrad defendants, Charter defendants, and Sparrows defendants	3/19/2024	3/12/24 Order Granting Receiver's Motion to Compel Discovery	Appeal dismissed by COA on 4/17/2024 Appellants' Petition for Cert is pending
2024-000916	Cape	Tibbs 2023CP400 1759	Sparrows defendants, Altrad defendants, Charter defendants	Pet for writ of cert filed 6/3/2024	COA dismissal of appeal from discovery order	Appellants' Petition for Cert is pending
2024-001063	Cape	Tibbs 2023CP400 1759	Altrad defendants	6/21/24	1. 5/23/2024 Order Granting Motion to Pre- Admit Exhibits 2. 5/23/2024 Order Granting Motion for Sanctions and Motion for Adverse Inference	Was held in abeyance due to improper removal. The Receiver filed a Motion to Dismiss on August 16, 2024.
2024-001064	Cape	Tibbs 2023CP400 1759	Sparrows defendants, Altrad defendants, Charter defendants	6/21/24	1. 5/23/2024 Order Granting Motion to Pre- Admit Exhibits 2. 5/23/2024 Order Granting Motion for Sanctions and Motion for Adverse Inference	Was held in abeyance due to improper removal. The Receiver filed a Motion to Dismiss on August 16, 2024.
2024-001065	Cape	Tibbs 2023CP400 1759	Charter defendants	6/21/24	1. 5/23/2024 Order Granting Motion to Pre- Admit Exhibits 2. 5/23/2024 Order Granting Motion for Sanctions and Motion for Adverse Inference	Was held in abeyance due to improper removal. The Receiver filed a Motion to Dismiss on August 16, 2024.

Not yet assigned	Cape	Tibbs 2023CP400 1759	Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.	8/30/24	6/20/2024 Order Scheduling Trial Date	
Not yet assigned	Cape	Tibbs 2023CP400 1759	Altrad Defendants	8/30/24	6/20/2024 Order Scheduling Trial Date	
Not yet assigned	Cape	Tibbs 2023CP400 1759	Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC	8/30/24	6/20/2024 Order Scheduling Trial Date	

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

Sincerely,

Jonathan M. Robinson

JMR/dlf

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