RECEIVED
Jun 10 2024
SC Court of Appeals

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

Civil Action No. 2023-CP-40-01759

Appellate Case Nos.
2023-002006
2023-002007
2023-002009
2023-002010
2023-002011

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton 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; Orporation 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, Anglo American PLC, De Beers, PLC, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd are the

Appellants.

RETURN TO PETITIONS FOR REHEARING

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. ("Respondent"), submits this return to the Petitions for Rehearing filed by Appellants in the above-captioned cases (collectively, the "Petitions").[1]

To briefly recap, Appellants sought premature, interlocutory review of a circuit court order entered on December 6, 2023, which rejected Appellants' personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership (the "December 6 Interlocutory Order"). Respondent filed a motion to dismiss the appeals, and Appellants filed their respective returns. On May 9, 2024, "after careful consideration of the submissions from all parties," Respondent's motion to dismiss was granted. *See* Order attached hereto as **Exhibit A** (the "Order").[2]

[1] Appellants and their corresponding case numbers are as follows:

- Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case No. 2003-002006);
- Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case No. 2003-002007);
- ESAB Corporation (Appellate Case No. 2003-002009);
- Charter Consolidated Ltd. (Appellate Case No. 2003-002010); and
- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002011).

[2] This outcome is consistent with the recent *and decisive* dismissals by the South Carolina Supreme Court and this Court of premature, similarly-situated, interlocutory appeals which too sought immediate review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. *See* Packet of Orders attached hereto as **Exhibit B**, issued in *Childers v. Davis Mechanical Contractors*, *et al.* No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024)(dismissing, in an order signed by all five justices, as not immediately appealable an order denying appellants' request to dissolve a receivership); *Welch v. Advance Auto Parts, et al.,* No.

A petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. It may not be used to "present the points [Appellants] overlooked themselves or to have the case tried in the Court of Appeals a second time." *Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Service, Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986). Appellants fail to meet this standard as they have not identified a point the Court of Appeals overlooked or misapprehended. To the contrary, in their Petitions, Appellants either rehash issues that were previously presented to and ruled upon by the Court or raise issues previously abandoned by Appellants that should not be considered now.[3] Accordingly, this Court should deny the Petitions.

(Signature page follows)

2024-000337 (Ct. App. Order dated April 12, 2024)(dismissing as not immediately appealable an order denying appellants' motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants' motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.,* No. 2024-000341 (Ct. App. Order dated April 12, 2024)(same); *Link v. 3M Company, 4520 Corp., Inc., et al.,* No. 2024-000342 (Ct. App. Order dated April 12, 2024)(rejecting appellants' contention that the circuit court's order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal).

[3] For example, Appellants did not argue in their returns to Respondent's motion to dismiss that the December 6 Interlocutory Order was immediately appealable pursuant to S.C. Code § 14-33-330(2). Such argument has therefore been abandoned by Appellants and should not be considered now. *Checker Yellow Cab Co., Inc.*, 287 S.C. at 612.

Respectfully Submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ *Lindsay A. Joyner*
John T. Lay, Jr., SC Bar No. 64526
Gray T. Culbreath, SC Bar No. 11907
Lindsay A. Joyner, SC Bar No. 77437
Ioannis (Ian) G. Conits, SC Bar No. 102675
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
iconits@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Jonathan M. Robinson
Shanon N. Peake
SMITH | ROBINSON, LLC
2530 Devine Street, Third Floor
Columbia, SC 29205
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com
(803) 254-5445

G. Murrell Smith, Jr.
SMITH | ROBINSON, LLC
PO Box 580
Sumter, SC 29151-0580
murrell@smithrobinsonlaw.com
(803) 778-2471

Troy S. Brown (*admitted pro hac vice*)
Dana E. Becker (*admitted pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming)*
Robert W. Jacques
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000
Attorneys for Third-Party Plaintiff

June 10, 2024

RECEIVED
Jun 10 2024
SC Court of Appeals

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

Appellate Case Nos.
2023-002006
2023-002007
2023-002009
2023-002010
2023-002011

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 **RETURN TO PETITIONS FOR REHEARING** was served on all other parties to this appeal on June 10, 2024, via email to their following counsel of record:

Theile B. McVey
tmcvey@kassellaw.com
Jamie D. Rutkoski

jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina, 29202-1476
and
Charles W. Branham, III
tbranham@dobslegal.com
Aaron D. Chapman
achapman@dobslegal.com
David C. Humen
dhumen@dobslegal.com
Ka'Leya Q. Hardin
khardin@dobslegal.com
Todd Barnes
tbarnes@dobslegal.com
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
Attorneys for Respondents John A. Tibbs and Margaret B. Tibbs

Peter D. Protopapas
pdp@rplegalgroup.com
John K. Chandler
jchandler@rplegalgroup.com
Brian M. Barnwell
bb@rplegalgroup.com
RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd, Columbia, SC 29204
PO Box 5640, Columbia, SC 29250
Receiver for CAPE PLC

Matthew Todd Carroll
todd.carroll@wbd-us.com
Kevin A. Hall
kevin.hall@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201

and

Mary Elizabeth O'Neill
elizabeth.oneill@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP

301 South College Street, Suite 3500
Charlotte, NC 28202
Attorneys for Altrad Investment Authority S.A.S.; and Mohed Altrad

Steven James Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Carmen V. Ganjehsani
cganjehsani@richardsonplowden.com
Ashwin R. Sanzgiri
asanzgiri@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, SC 29201
Attorneys for ArranCo US, LLC; Hawk Bidco US Inc.; and Sparrows Offshore, LLC;

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
Attorneys for DeBeers Consolidated Mines LTD, De Beers PLC, De Beers UK Ltd, De Beers Centenary AG and Anglo American PLC

A. Victor Rawl, Jr.
vrawl@grsm.com
GORDON & REES LLP
677 King Street, Suite 450
Charleston, Sc 29403
Attorney for Central Mining & Investment Corporation Ltd.; Charter Consolidated Ltd.; and ESAB Corporation

Stephen L. Brown (SC Bar No. 66468)
sbrown@ycrlaw.com
Russell G. Hines (SC Bar No. 72100)
RHines@ycrlaw.com
James D. Gandy, III (SC Bar No. 11925)
tgandy@ycrlaw.com
Graydon V. Olive, IV (SC Bar No. 105319)
golive@ycrlaw.com
CLEMENT RIVERS, LLP
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellant Asbestos Corporation Limited

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ *Lindsay A. Joyner*
John T. Lay, Jr., SC Bar No. 64526
Gray T. Culbreath, SC Bar No. 11907
Lindsay A. Joyner, SC Bar No. 77437
Laura W. Jordan, SC Bar No. 100374
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ljordan@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Jonathan M. Robinson
Shanon N. Peake
SMITH | ROBINSON, LLC
2530 Devine Street, Third Floor
Columbia, SC 29205
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com
(803) 254-5445

G. Murrell Smith, Jr.
SMITH | ROBINSON, LLC
PO Box 580
Sumter, SC 29151-0580
murrell@smithrobinsonlaw.com
(803) 778-2471

Troy S. Brown (*admitted pro hac vice*)
Dana E. Becker (*admitted pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming)*
Robert W. Jacques
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000
Attorneys for Third-Party Plaintiff

June 10, 2024

From:	Lindsay Joyner
To:	"James Elliott"; "Cameron Berthelsen"; "Marcy Dalton"; "TMcVey@kassellaw.com"; "jrutkoski@kassellaw.com"; "tbranham@dobslegal.com"; "achapman@dobslegal.com"; "dhumen@dobslegal.com"; "khardin@dobslegal.com"; "tbarnes@dobslegal.com"; Peter Protopapas; John Chandler; Brian Barnwell; "Todd.carroll@wbd-us.com"; "kevin.hall@wbd-us.com"; "Elizabeth.ONeill@wbd-us.com"; "Steve Pugh"; "Ben Carlton"; "Carmen Ganjehsani"; "Ashwin Sanzgiri"; "vrawl@grsm.com"; Shannon Peake; Jon Robinson; "murrell@smithrobinsonlaw.com"; John T. Lay; Gray Culbreath; Eleanor Jones; "sbrown@ycrlaw.com"; "RHines@ycrlaw.com"; "tgandy@ycrlaw.com"; "golive@ycrlaw.com"; "AJustman@ycrlaw.com"; "pbell@ycrlaw.com"; "Helen Elliott"; Lori Seaborn; Troy Brown; Dana Becker; Brady Edwards; Robert Jacques; Paul A. Scrudato
Bcc:	"10565_1 Keith W_ Park_ individually and as the PR of the Estate of Isabella Park v_ Cape PLC_ et al_ Email _10565_1_"
Subject:	RE: Tibbs v. Asbestos Corporation Limited, App. Case Nos.: 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011 [IMAN-IMANMAIN.FID1086139]
Date:	Monday, June 10, 2024 4:22:45 PM
Attachments:	06.10.24 Return to Petitions for Rehearing(14492355.1).pdf 06.10.24 POS to Return to Petitions for Rehearing.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 Return to the Petitions for Rehearing 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.

Please let me know if you have any questions.

Thanks,
Lindsay

GALLIVAN WHITE BOYD
CELEBRATING 75 YEARS
1948 - 2023

Lindsay Anne Joyner
Partner
ljoyner@gwblawfirm.com

Gallivan, White & Boyd P.A.
40 Calhoun Street | Suite 315 | Charleston SC 29401
843 414 8107 Direct | 843 735 7600 Main | 843 414 8070 Fax
Mailing Post Office Box 22768 | Charleston SC 29413

vCard | BioURL | Website

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

From: Lindsay Joyner
Sent: Friday, May 3, 2024 4:29 PM
To: James Elliott <JElliott@RichardsonPlowden.com>; Cameron Berthelsen <CBerthelsen@RichardsonPlowden.com>; Marcy Dalton <MDalton@RichardsonPlowden.com>; TMcVey@kassellaw.com; jrutkoski@kassellaw.com; tbranham@dobslegal.com; achapman@dobslegal.com; dhumen@dobslegal.com; khardin@dobslegal.com; tbarnes@dobslegal.com; Peter Protopapas <pdp@rplegalgroup.com>; John Chandler <jchandler@rplegalgroup.com>; Brian

Barnwell <BB@rplegalgroup.com>; Todd.carroll@wbd-us.com; kevin.hall@wbd-us.com; Elizabeth.ONeill@wbd-us.com; Steve Pugh <SPugh@RichardsonPlowden.com>; Ben Carlton <BCarlton@RichardsonPlowden.com>; Carmen Ganjehsani <CGanjehsani@RichardsonPlowden.com>; Ashwin Sanzgiri <ASanzgiri@RichardsonPlowden.com>; vrawl@grsm.com; Shannon Peake <shanonp@smithrobinsonlaw.com>; Jon Robinson <jon@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; John T. Lay <jlay@gwblawfirm.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; Laura Jordan <ljordan@gwblawfirm.com>; Eleanor Jones <ejones@gwblawfirm.com>; sbrown@ycrlaw.com; RHines@ycrlaw.com; tgandy@ycrlaw.com; golive@ycrlaw.com; AJustman@ycrlaw.com; pbell@ycrlaw.com; Helen Elliott <HElliott@RichardsonPlowden.com>; Amelia Farmer <afarmer@gwblawfirm.com>; Lori Seaborn <lseaborn@gwblawfirm.com>; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques <Robert.jacques@morganlewis.com>; Paul A. Scrudato <paul.scrudato@morganlewis.com>
Subject: RE: Tibbs v. Asbestos Corporation Limited, App. Case Nos.: 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011 [IMAN-IMANMAIN.FID1086139]

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 Reply in Support of Motion to Dismiss Interlocutory Appeals (Specifically, The Appeal Filed By The Oppenheimer Appellants) in the above-referenced appellate cases, which we will be filing with the Court of Appeals of South Carolina momentarily, which will include a copy of this email with the POS attached here as well.

Please let me know if you have any questions.

Thanks,
Lindsay

Lindsay Anne Joyner
Partner
ljoyner@gwblawfirm.com

Gallivan, White & Boyd P.A.
40 Calhoun Street | Suite 315 | Charleston SC 29401
843 414 8107 Direct | 843 735 7600 Main | 843 414 8070 Fax
Mailing Post Office Box 22768 | Charleston SC 29413

vCard | BioURL | Website

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.