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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2024-001423
Circuit Court Case No. 2023-CP-40-01759

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.; Flowserve 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, Inc.; 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,

of which

Asbestos Corporation Limited is the..... Appellant,

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

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

RETURN TO MOTION TO STRIKE

Pursuant to Rule 240(f), SCACR, Petitioners file this brief response to the Motion to Strike filed by the Receiver in this matter. The Court should deny the motion.

The Receiver first criticizes Petitioners for misnaming the Reply document as a Return to a Motion to Certify when it was, in fact, a Reply to the Receiver’s Return to the Petition for a Writ of Certiorari. This was merely a scrivener’s error and not some sinister “renaming” or “recasting” of the document, as the Receiver asserts. (Motion, p. 3 and n. 1). As clearly stated in the first sentence of the Reply document, the document Petitioners filed is actually a Reply to the Return to the Petition for Writ of Certiorari. Further, the Reply document directly addresses the assertions in Receiver’s Return, as well as the lack of any arguments of substance in response to any of the contentions in the Petition.¹

The Receiver next seeks an order striking footnotes 6 and 7 from the Reply. (Motion, p. 3). The Court should deny this motion.

Footnote 6 merely points out this Court’s authority under article V, § 5 of the South Carolina Constitution to grant discretionary relief in a matter the Court deems unappealable. This is a power the Court has used *sua sponte*. See, e.g., *Sanford v. South Carolina State Ethics Com’n*, 385 S.C. 483, 495, 685 S.E.2d 600, 607 (2009) (Court denied a request for mandamus but

¹The Clerk appropriately docketed the Reply. However, Petitioner will file an amended document with the correct designation in the caption should the Court desire one.

construed the filing as seeking injunctive relief; Court stated “it is ‘the substance of the requested relief that matters’ and not the form in which the petition for relief is framed”).

Footnote 7 points out other pending matters that involve the same issues, and merely suggested consolidation. Again, this is something the appellate courts have done *sua sponte*. *E.g.*, *Crawford v. Central Mortg. Co.*, 404 S.C. 39, 44, 744 S.E.2d 538, 540 (2013 (Toal, CJ) (Court consolidated two appeals into one opinion even though the cases were heard separately); *Limehouse v. Hulsey*, 404 S.C. 93, 96, 744 S.E.2d 566, 568 (2013) (Supreme Court consolidated two separate appeals where “the dispositive issue in each case [was] identical”); *Bowers v. Dept. of Transp.* 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004) (Kittredge, AJ) (Court of Appeals *sua sponte* consolidated two appeals pursuant to Rule 214). There was no formal request but merely a suggestion in Footnote 7 for reasons of judicial economy. Further, it matters not that any party in those matters have objected to consolidation. (Motion, p. 3, n. 2). See S.C. Const. art. V, § 5 (Supreme Court has power to issue writs or orders, including original and remedial writs); Rule 214, SCACR (“where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated”).

Finally, the Receiver requests the opportunity to file a sur-reply to Footnotes 6 and 7 in the event the Court does not strike the footnotes. The Court should not entertain such an unusual step. Footnote 6 states black-letter law about this Court’s ability to issue writs to review matters of significant public concern; is the Receiver suggesting such power does not exist? Footnote 7 points out other matters raising the same issues that were pending before the Court; again, is the Receiver contesting their existence?

At its heart, the Receiver’s motion to strike is yet another step taken by the Receiver to attempt to avoid merits review of the improper appointment of the Receiver in *Park*, the improper

third-party action brought by the Receiver in *Tibbs*, and the present Order on Appeal expanding the number of entities in receivership (adding Cape Intermediate Holdings Ltd. to the receivership) – all while actively seeking an order to again modify the appointment order and to retroactively approve the Receiver’s ultra vires actions in this case.²

Petitioners respectfully request that the Court deny the Motion to Strike and proceed to address the merits of the Petition for Writ of Certiorari in this matter.

² On November 1, 2024, Receiver filed the attached Motion to Clarify Order Appointing Receiver for Cape PLC, in which 1) “the Receiver seeks [an order finding] that the Receiver’s Cape litigation to date [in the *Tibbs* case] all has been conducted within the appropriate scope of his appointment” and 2) the Receiver seeks an expansion of “the Receiver’s power and authority to ... [include] the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape.” The Receiver claimed that such order was necessary to address several issues, including: 1) “On September 1, 2023, Third-Party Defendants ESAB Corporation (“ESAB”) filed motions to dismiss the Receiver’s Third Party Action [in which it argued] “The Receiver’s attempts to marshal assets located outside South Carolina exceed the scope of his authority””; 2) Third-Party Defendant “Altrad filed a Motion to Dissolve the Cape PLC Receivership [and] argued that “The Order Appointing Receiver, based on its plain language and pursuant to South Carolina law, does not authorize the Receiver to file lawsuits on behalf of a foreign company against other foreign and out-of-state companies””; and 3) the Report of Hon. William Wilkins (attached to the Motion) which explained that “a state court appointed receiver would need to undertake care to avoid pursuing legal actions where ... such conduct would exceed both his court appointed authority as circumscribed by controlling precedent, as well as the plain language of Rule 66, SCRCP.” This motion, while specifically addressing Receiver’s actions in this (the *Tibbs*) case, was filed in the *Park* case – where Petitioners are not parties (Attached as Exhibit 1). The circuit court granted the motion on November 5, 2024 (Attached as Exhibit 2).

Respectfully submitted,

Dated: November 8, 2024

BLUESTEIN THOMPSON SULLIVAN LLC

s/John S. Nichols

John S. Nichols (SC 04210)

Email: john@bluesteinattorneys.com

1614 Taylor Street

Columbia, SC 29202

Telephone: 803-779-7599

*Attorneys for Third-Party Defendants
Charter Consolidated Ltd., ESAB
Corporation, and Central Mining &
Investment Corporation Ltd*

GORDON REES SCULLY MANSUKHANI LLP

By *s/A. Victor Rawl, Jr.*

A. Victor Rawl, Jr. (SC 9261)

Email: vrawl@grsm.com

677 King Street, Suite 450

Charleston, SC 29403

Telephone: (843) 278-5900