

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefer Toal, Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs.....Respondents,

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 ump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....Defendants,

of which

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

MOTION OF *AMICI CURIAE* CERTAIN UNDERWRITERS AT LLOYD’S, LONDON AND CERTAIN LONDON MARKET INSURANCE COMPANIES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

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Certain Underwriters at Lloyd’s, London and certain London market insurance companies (collectively, “Certain London Market Insurers” or “CLMI”)* subscribing severally (not jointly) to certain excess liability insurance policies regarding Asbestos Corporation Limited (“ACL”) respectfully move for leave to participate in oral argument in this case as *amici curiae*, to enlarge time for oral argument in this case (together with the consolidated case of *Welch v. Atlas Turner, Inc.*) to 45 minutes, and to allocate the time as follows: 15 minutes for Appellant, 5 minutes for CLMI, 20 minutes for Respondents, and 5 minutes for Appellant in reply. In the alternative, if oral argument time is not enlarged, CLMI propose the following allocation: 10 minutes for Appellant, 5 minutes for CLMI, 15 minutes for Respondents, and 5 minutes for Appellant in reply. Appellant consents to this motion.

This case raises significant questions about the validity of the trial court’s appointment of the Receiver for ACL, including (1) whether any provision of South Carolina law authorized the trial court to impose a receivership on a solvent foreign corporation as a discovery sanction, and (2) whether the Receiver’s appointment violates the United States Constitution by impermissibly interfering with Congress’s exclusive power to regulate foreign commerce and intruding on Congress’s exclusive power to conduct the foreign affairs of the United States.

With leave of the Court of Appeals, CLMI filed a brief as *amici curiae* supporting ACL in this matter. *See Order, Tibbs v. 3M Co.*, No. 2023-001461 (S.C. Ct. App. June 18, 2024). Thereafter, CLMI filed a petition for a writ of prohibition in this Court challenging the trial court’s receivership order and asking this Court to treat their petition as a companion case to this matter. The Court denied the petition because “[t]he issue” that CLMI “ask[ed] th[e] Court to consider is

* Certain London market insurance companies consist of The Scottish Lion Insurance Company Ltd., Tenecom Ltd. (as successor to relevant liabilities of Winterthur Swiss Insurance Company), and Yasuda Fire and Marine Insurance Company (UK) Limited, now known as Tenecom Ltd.

pending on direct appeal” in this case and in the companion *Welch* case. Order, p. 1, *CLMI v. Toal*, No. 2024-001959 (S.C. Sup. Ct. Dec. 12, 2024).

As insurers of ACL, CLMI have a direct and substantial interest in the resolution of the critical questions before this Court. CLMI have experienced firsthand the tremendous, unanticipated costs and destabilizing effects of the trial court’s imposition of a receivership on ACL, an active, solvent Canadian corporation. As a result of the trial court’s appointment of the Receiver, CLMI have been placed in the untenable position of deciding whether to follow the directives of ACL’s Canadian board and officers or the directions of ACL’s Receiver.

CLMI’s participation in oral argument would materially assist this Court in its consideration of this case by highlighting the unique perspective of ACL’s insurers. In particular, at oral argument, CLMI would expand upon the constitutional arguments raised by ACL. *See* Final Brief of ACL, p. 9, *Tibbs v. 3M Co.*, No. 2023-001461 (S.C. Ct. App. May 21, 2024). As CLMI argued in their brief, the Receivership Order violates the Commerce Clause of the United States Constitution and intrudes on the federal government’s foreign-affairs authority. *See* Brief of CLMI, pp. 17–20, *Tibbs v. 3M Co.*, No. 2023-001461 (S.C. Ct. App. Apr. 26, 2024). These constitutional limits reflect the territorial boundaries of state power and are consistent with, and reinforce, the limits on the trial court’s receivership authority embodied in South Carolina statutes and case law. Avoiding the constitutional problems that would arise from appointing a South Carolina receiver for an active, solvent Canadian corporation constitutes an additional reason for the Court to rule in ACL’s favor on the state-law grounds that are the focus of ACL’s brief.

Because the Court’s consideration of the state-law and constitutional arguments in tandem at oral argument through separate, but complementary, presentations from ACL and CLMI would provide a comprehensive overview of the serious legal problems with the receivership order, the

Court should grant CLMI leave to participate in oral argument. *See James v. Anne's Inc.*, 390 S.C. 188, 190 n.1, 701 S.E.2d 730, 731 n.1 (2010) (noting that the Court granted three *amici* leave to participate in oral argument).

Respectfully submitted,

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