

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefler Toal, Chief Justice (Ret.)

S.C. SUPREME COURT

Case No. 2023-CP-40-01759

Appellate Case No. 2023-001461

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.; Beatty 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,

of which

Asbestos Corporation Limited, is the Appellant

and

Peter Protopapas, Duly Appointed Receiver for Asbestos Corporation Limited, is a Respondent.

**THE RECEIVER’S RETURN TO CLMI’S MOTION
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT**

Respondent Peter Protopapas, Duly Appointed Receiver for the insurance assets of Asbestos Corporation Limited, submits this Return to Amici Curiae Certain Underwriters at Lloyd’s, London and Certain London Market Insurance Companies (“CLMI”) Motion for Leave to Participate in Oral Argument. Respectfully, the Court should deny CLMI’s Motion.

There are no extraordinary circumstances in this case necessitating a deviation from the rule that amici curiae may only participate in an appeal by filing a brief, when allowed, but not by participating in oral argument. *See* Rule 213, SCACR; 16 S.C. Jur. Brief of Amicus Curiae § 4 (explaining “historically, an amicus curiae has been allowed only to file a brief with the appellate court, but not to otherwise participate in the appeal process or in oral argument”). CLMI have acknowledged that amici curiae have no right to participate in oral argument, and, in an attempt to have the opportunity for “party participation,” CLMI sought an extraordinary writ from this Court. *Pet. for Writ of Prohibition at 4, Certain Underwriters at Lloyd’s, London, et al. v. The Honorable Jean H. Toal, et al.*, Appellate Case No. 2024-001959 (Dec. 6, 2024). This Court denied CLMI’s

Petition for a Writ of Prohibition. Order, *Certain Underwriters at Lloyd's, London, et al. v. The Honorable Jean H. Toal, et al.*, Appellate Case No. 2024-001959 (Dec. 12, 2024).

CLMI do not cite any exceptional circumstance to support their request for oral argument. Instead, CLMI wish to “expand upon the constitutional arguments raised by ACL” and “highlight[] the unique perspective of ACL’s insurers.” (Mtn. at 2.)¹ However, ACL, through its counsel, is more than capable of presenting its own constitutional arguments to this Court. Further, to the extent that CLMI want to expand any issues in this case to those not raised to or considered by the circuit court, that would be improper. Rule 213, SCACR (explaining an amicus brief “*shall be limited to argument of the issues on appeal as presented by the parties*” (emphasis added)). The questions before this Court are narrow—(1) whether the circuit court properly found ACL in contempt of court and struck its answer and (2) whether the circuit court properly appointed a receiver. These issues concern: (1) ACL as the owner of the (insurance) assets, (2) Respondents – asbestos personal injury claimants who sued ACL in the first instance and obtained the orders on appeal, and (3) the Receiver who was appointed by the circuit court. The Court should reject CLMI’s attempt to interject new issues about the purported “destabilizing effects” of a receivership order and requests for an advisory opinion about “whether [CLMI should] follow the directives of ACL[] . . . or the directions of ACL’s Receiver” into the already-limited oral argument time.²

CLMI could have filed a motion to intervene in this appeal or the circuit court if it wanted to be heard as a party, but it did not do so. Further, to the extent CLMI has questions about its

¹ Highlighting the inconsistent positions of ACL and CLMI (which have not been subjected to discovery or cross-examination), CLMI assert they are some of ACL’s insurers; an assertion which directly contradicts ACL’s representation to the circuit court at an August 21, 2023 hearing that ACL does not have any insurance. (Welch R. p. 590).

² Counsel for the Receiver and counsel for the *Tibbs* and *Welch* Respondents have only fifteen minutes to split for the February 11 oral argument in the consolidated *Tibbs* and *Welch* matters.

obligations as an insurer of ACL considering the appointment of a receiver, it could file a motion for summary judgment in the Receiver’s declaratory judgment action against CLMI already pending in the circuit court and request guidance from the court there. *See Christopher L. Lewis, Individually and as Personal Representative of the Estate of Elizabeth A. Howard, deceased, vs. Asbestos Corporation Limited, et al.*, 2024-CP-40-00458; In Richland County, South Carolina (Third Party Complaint Asbestos Corporation Limited by and through its Receiver v. Insurance Company of North America, et. al filed 2/21/24). They have not done that either.

Like Appellant ACL, CLMI has undertaken a strategy to circumvent litigating this matter in the South Carolina Circuit Court by avoiding the merits through improper removals, extraordinary writs, and now this attempt to participate in this case at the appellate level essentially as a party rather than as an amicus. Contemporaneous to this appeal, CLMI launched their newest collateral attack on the state court appointed Receivership in an asbestos action filed against ACL by removing a tort action to federal court in violation of the *Barton* doctrine. *See* Notice of Removal, *Forman v. ACL*, Case No. 3:24-cv-7284-SAL (Dec. 13, 2024). CLMI were not even parties to the *Forman* case and instead noted they were removing the case “on their own behalf and as subrogee of” ACL.³ *Id.* A motion to remand is currently being considered by the federal court, and CLMI have filed a request for oral argument on the motion to remand. *See* Request for Oral Argument, *Forman v. ACL*, Case No. 3:24-cv-7284-SAL (Jan. 2, 2025). CLMI’s collateral attacks on the Receivership through a myriad of improper filings (outside of the Receivership Court) contain factually inaccurate assertions—assertions that CLMI are banking on will never be

³ After removing as a non-party, CLMI moved to intervene in the tort action. *See* Certain Lloyd’s Market Insurers’ Motion to Intervene, *Forman v. ACL*, Case No. 3:24-cv-7284-SAL (Dec. 23, 2024).

subjected to discovery and cross-examination.⁴ CLMI’s attacks on the Receiver have even invoked the proposition (which was sternly rejected by this Court) that a foreign court may enjoin a South Carolina appointed Receiver and interfere with the administration of justice in the United States. Specifically, CLMI stated: “Indeed, the Receiver’s conduct vis-à-vis ACL mirrors conduct that the High Court of Justice of England and Wales recently held justifies imposing a worldwide injunction barring him from acting as receiver with respect to another non-U.S. corporation, in part because he ‘has demonstrated that he is not fulfilling [his] obligation, and is indeed apparently doing the opposite. (Exhibit F at 26, 58-59)’” *Memorandum of Law In Support Of Certain London Market Insurers’ Motion To Intervene* at 11.⁵

ACL’s refusal to participate in this case has permitted CLMI (and ACL) to make assertions about ACL that are not factually supported. For example, CLMI’s characterization of ACL as an “active, solvent Canadian corporation” is misleading. According to ACL’s own auditor Price Waterhouse Coopers LLP’s (“PWC”) 2022 Report⁶, PWC identified asbestos liability as the “Key

⁴ In its pursuit of attacking the validity of the state court appointed Receiver and exclusive jurisdiction of the Receiver Court, CLMI launches a series of contradictory allegations. While on one hand asserting ALC is a solvent ongoing entity, CLMI acknowledges in its Memorandum of Law in Support of their Motion to Intervene that “It is clear, then, that the ultimate target of the Trustee’s lawsuit is not ACL, but rather CLMI and ACL’s other unnamed alleged insurer co-conspirators” and “Notably, the Trustee further alleges that ACL’s only material asset or income that is available to compensate the alleged victims is ‘its previously concealed insurance (which it conspired to hide from claimants.’” *Id.* at 2, 8.

⁵ Despite this Court finding those efforts “shocking” and “indefensible” in its January 16, 2025 Order, the petitioner Altrad-owned Cape, plc’s counsel, Signature Litigation, LLP (which is not licensed in South Carolina or in the United States) served notice of additional threats against the Receiver and also to Plaintiffs’ attorneys and restated its efforts to obstruct the court-appointed Receiver and any person or court that recognizes the court-appointed Receiver. *See* Ex. B.

⁶ PWC performed financial audits of ACL for the years 2021 and 2022 (the “PWC Reports”), and these reports were included in the ACL Annual Report for each year. ACL’s Annual Reports for 2021 and 2022 were included in the Supplemental Appendix Vol. 1 filed with the Receiver’s Return to CLMI’s Petition for Writ of Prohibition. *See* Supplemental Appendix at pp. 93–193, Appellate Case No. 2024-001959 (Nov. 27, 2024) (“Supp. App.”). The Receiver attaches this portion of the Supplemental Appendix hereto as Ex. A. Additionally, the circuit court had this

audit matter” for the 2022 audit—defined as “those matters that, in our professional judgment, were of most significance in the audit.”⁷ The Report explained:

The Corporation is facing numerous claims arising from its past asbestos-related activities. The provisions for litigation are from individuals claiming exposure to asbestos fibre or to asbestos-containing products. In the United States, numerous actions for bodily injury have been filed against certain subsidiaries of the Corporation that either operated asbestos mines or manufactured asbestos-containing products.⁸

Further, according to its own auditors, ACL is insolvent because it has more liability than it has assets.⁹ PWC confirms that “a material uncertainty that may cast significant doubt on the ability of the Corporation and its subsidiaries to continue as a going concern.”¹⁰

ACL’s defiance of court rules across the United States may be explained by this report. Tellingly, PWC explained in its 2022 Report that the company does not make provision for U.S. default judgments because they are unenforceable in Quebec, where the company is located:

[A]ccording to the opinion of legal advisers consulted, if a default judgment were to be rendered against the Corporation in the United States, such judgment could not be enforced against the Corporation prior to its verification or recognition by a competent court in the province of Quebec; therefore, no provision has been established for those lawsuits.¹¹

In connection with his appointment as receiver, the Receiver uncovered information that ACL had misled the circuit court regarding the existence and status of insurance assets. On August 18, 2023, the Receiver filed a notice regarding these misrepresentations, alerting the circuit court

information available to it when it appointed the Receiver for ACL on September 3, 2023. The Receiver filed the PWC with the circuit court on August 25, 2023. *See* Notice of Filing of Additional Information Regarding Asbestos Corporation Limited by the Receiver for Atlas Turner and exhibits, *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759 (filed Aug. 25, 2023).

⁷ Ex. A at 160.

⁸ Ex. A at 160.

⁹ Ex. A at 178. In 2022, ACL had a \$20,184,000 Canadian dollar deficit.

¹⁰ Ex. A at 169.

¹¹ Ex. A at 173.

to “documents that evidence potential past liquidations of Insurance Assets”—including an agreement in which these companies may have released certain insurance rights in the 1980s. (*Tibbs R.* pp. 1268–98.) After the Receiver reported his findings to the Court, ACL provided information that conflicted with known information about its insurance. Specifically, at the August 21, 2023 hearing, counsel for ACL represented to the circuit court that his client did not have insurance:

MR. BROWN: And I will answer Ms. McVey’s question, which is why have we not tendered? We have no insurance to tender against. It’s just that simple. I am not paid by insurance. It would make no sense to tender, Your Honor.

(*Welch R.* p. 590.) The Receiver’s investigation revealed that the invoices Mr. Brown submitted to ACL were being reimbursed by ACL’s insurers.¹² The receivership—whose central function is to identify and marshal insurance assets—is especially needed where ACL misrepresented to the circuit court that it had no insurance coverage and is actively concealing the value of its discoverable insurance assets.

CLMI have already extensively presented their purported interest and arguments to this Court by way of their amicus brief and a rejected Petition for Writ of Prohibition. ACL is more than capable of arguing the constitutional issues it raised. Allowing CLMI to present additional oral argument to the Court would improperly expand the issues in this case, provide a platform for CLMI to present their case at the Supreme Court through unsubstantiated allegations without the benefit of cross-examination or discovery, unnecessarily constrain the limited time available to the actual parties to present their arguments to the Court, and serve to reward CLMI’s recalcitrant

¹² CLMI, by and through counsel, were present at the August 21, 2023 hearing but did not correct the misstatement about the existence of insurance for ACL. (*Welch R.* p. 665.)

behavior with a platform not otherwise afforded amicus curiae. Therefore, the Receiver respectfully requests the Court deny CLMI's Motion for Leave to Participate in Oral Argument.

Respectfully submitted,

s/ Jonathan M. Robinson

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