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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
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.

**REPLY IN SUPPORT OF 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”)* moved for leave to participate in oral argument in this case with the consent of the only party that would be directly affected by CLMI’s participation in the argument, ACL, which agreed to cede five minutes of its argument time to CLMI. Granting CLMI leave to participate in oral argument would not in any way diminish the oral-argument time available to the Receiver for Asbestos Corporation Limited (“ACL”); indeed, in their motion, CLMI requested that the Court *expand* the oral-argument time for both sides by five minutes, which would directly *benefit* the Receiver. The Receiver nevertheless interposes a series of objections to CLMI’s participation in oral argument. None withstands scrutiny.

First, the Receiver contends that this Court only permits an *amicus curiae* to participate in oral argument in “extraordinary circumstances.” Return at 2. But the South Carolina Rules of Appellate Procedure do not impose that artificially high standard—the Rules are silent on the issue, leaving it to the Court’s sound discretion to determine when an *amicus curiae*’s participation in oral argument would be helpful—and both this Court’s longstanding practice and the treatise cited by the Receiver belie his manufactured standard. *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); *see also* 16 S.C. Jur. Brief of Amicus Curiae § 4 (acknowledging that *amici* have been permitted to participate in oral argument).

Second, the Receiver notes that this Court denied CLMI’s petition for a writ of prohibition challenging the trial court’s receivership order. Return at 2-3. But the Court did so for the

* 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.

expressed reason that “[t]he issue” that CLMI “ask[ed] th[e] Court to consider is 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). The Court’s reasoning underscores CLMI’s strong interest, in their own right, in the outcome of this litigation.

Finally, the Receiver spends four of the seven pages of his Return raising several new substantive responses to arguments that CLMI have raised, in their *amicus curiae* brief and elsewhere, challenging the validity of the ACL receivership. Return at 4-7. The Receiver’s assertions have no bearing on whether CLMI should be granted leave to participate in oral argument. Regardless, the appropriate time for the Receiver to object to CLMI’s arguments in this case would have been in response to CLMI’s motion for leave to file an *amicus curiae* brief in the Court of Appeals, which was accompanied by a copy of CLMI’s proposed brief. After receiving a copy of the proposed brief, the Receiver elected not to respond to CLMI’s motion for leave, and the Court of Appeals (which also received a copy of the proposed brief) granted CLMI’s motion for leave to file the *amicus curiae* brief and authorized the parties to file a response to the brief. The Receiver did so, *see* Receiver’s Response to London Insurers’ Amicus Brief (Sept. 30, 2024)—without raising several of the substantive arguments advanced in his Return—and thus has had a full opportunity to challenge the arguments in CLMI’s *amicus curiae* brief. The Receiver will be free to amplify the points that he did raise in prior briefing—and to respond to the oral argument of CLMI’s counsel, if leave to participate is granted—during the argument on February 11.

Respectfully submitted,

By: /s/ Theodore L. Manos

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