

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 16 2025

S.C. SUPREME COURT

Appeal from Richland County
Court of Common Pleas

Honorable Jean Hoefler Toal, 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 Pump, 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

Appellant.

**BRIEF OF APPELLANT ASBESTOS CORPORATION LIMITED IN RESPONSE TO
THE COURT’S MAY 8, 2025, LETTER**

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Appellant Asbestos Corporation Limited (“ACL”) respectfully submits this response to the Court’s letter dated May 8, 2025, and the letter of CLMI as *amici curiae* dated May 7, 2025. This response has been prepared in consultation with [Orrick, Herrington & Sutcliffe LLP, as] counsel for ACL’s foreign representative in the Bankruptcy Court proceedings. For the following reasons, ACL believes that this case is stayed under the Bankruptcy Court’s May 6, 2025 order.¹

BACKGROUND

As the Court is aware, ACL is a Canadian corporation. On May 6, 2025, ACL and CLMI jointly commenced an insolvency proceeding for ACL (the “Canadian Proceeding”) under the

¹ ACL takes no position on whether the other cases listed in the Court’s May 8 letter should be stayed.

Companies' Creditors Arrangement Act in the Québec Superior Court of Justice (the "Canadian Court"). That same day, ACL (through Raymond Chabot Inc., a monitor appointed by the Canadian Court and authorized to commence proceedings ancillary to the Canadian Proceedings in the United States and other foreign jurisdictions)² filed a petition in the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") commencing a case under chapter 15 of the U.S. Bankruptcy Code (the "Chapter 15 Case"), seeking recognition of the Canadian proceeding as a "foreign proceeding." See 11 U.S.C. §§ 1502(4), 1517(b). ACL also sought immediate *ex parte* relief pursuant to 11 U.S.C. § 1519, including a stay of all U.S. litigation against ACL and CLMI (which, among others, constitute the "Stay Parties"). Following a hearing on the evening of May 6, the Bankruptcy Court entered a Temporary Restraining Order (the "TRO", attached hereto as **Exhibit A**) granting, *inter alia*, the following relief on an interim basis (the "TRO Relief"):

Section 362 of the Bankruptcy Code applies with respect to the Stay Parties and their U.S. Interests;

for the avoidance of doubt, the stay will operate to stay and restrain all persons; and entities, other than the Petitioner and its representative and agents, from, to the extent related to the Debtor:

i) commencing or continuing any suit, action, or proceeding against the Stay Parties or their U.S. Interests³;

... and;

administering, exercising control over, transferring, encumbering, relinquishing or otherwise using, disposing of, or interfering with any of the Stay Parties' U.S.

² See *Notice of Filing of Rectified Canadian Order*, Ex. A at ¶¶ 60–61, *In re Asbestos Corp. Ltd.*, Case No. 25-10934-mg (Bankr. S.D.N.Y. May 8, 2025), ECF No. 14 (hereinafter, the "Rectified Initial Order").

³ ACL's TRO motion defines U.S. Interests to include: "all of [ACL]'s (i) property and the proceeds thereof, if any, located within the territorial jurisdiction of the United States, as further defined in 11 U.S.C. § 1502(8), including the London Policies (to the extent that the London Policies or the proceeds thereof are deemed to be property of the Debtor in the territorial jurisdiction of the United States); and (ii) rights obligations and responsibilities in the United States." See *Motion for (I) Ex Parte Emergency Relief and (II) Provisional Relief Pursuant to 11 U.S.C. §§ 1519, 362, and 105(a)*, at 9, n.3., Case No. 25-10934-mg (Bankr. S.D.N.Y. May 6, 2025) ECF No. 5. The London Policies, in turn, are defined to include the insurance policies potentially covering ACL's asbestos-related liabilities. See *id.* at 9–10, n.4.

Interests or agreements in the United States (if any) without the express consent of the Petitioner or as permitted by the Canadian Orders.⁴

ACL's May 6 filings also included a motion for provisional relief, which seeks to extend the TRO Relief until the Bankruptcy Court rules on ACL's petition for recognition.⁵ *See* 11 U.S.C. § 1519 (describing provisional relief that may be granted upon the filing of a chapter 15 petition). The Bankruptcy Court scheduled the provisional relief hearing for May 19, 2025.

At ACL's request, the Bankruptcy Court also scheduled a recognition hearing for June 2, 2025, at which the Bankruptcy Court will consider whether to recognize the Canadian Proceeding as a foreign proceeding. *See Order (I) Scheduling Hearing on Verified Petition of Asbestos Corporation Limited (II) Specifying Deadline for Filing Objections, and (III) Specifying Form and Manner of Service of Notice*, at 2, Case No. 25-10934-mg (Bankr. S.D.N.Y. May 7, 2025), ECF No. 10. ACL has requested that upon recognition the Bankruptcy Court extend the injunctive relief for the duration of the chapter 15 case. *See Verified Petition and Motion of Foreign Representative for (A) Recognition of the CCAA Proceeding as a Foreign Main Proceeding or, in the Alternative, as a Foreign Nonmain Proceeding, and (B) Certain Related Relief*, ¶¶ 68–69, Case No. 25-10934-mg (Bankr. S.D.N.Y. May 6, 2025), ECF No. 4; 11 U.S.C. § 1521 (describing relief that may be granted upon recognition).

ARGUMENT

Section 362(a)(1) of the Bankruptcy Code, which the TRO incorporates, provides an automatic stay “applicable to all entities, of ... (1) the commencement or continuation ... of a

⁴ These aspects of the TRO Relief are congruent with relief granted by the Canadian Court in its Initial Order. *See* Rectified Initial Order, ¶¶ 25–28.

⁵ On May 6, 2025, the Bankruptcy Court inadvertently docketed an order granting ACL's motion for provisional relief, which CLMI attached to their May 7 letter. The Bankruptcy Court has since corrected the docket by withdrawing that order. Case No. 25-10934-mg (Bankr. S.D.N.Y. May 6, 2025), ECF No. 6. The TRO, however, remains in effect and affords relief identical to that described in the withdrawn provisional relief order. *See* Ex. A (TRO).

judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy case] case.” The TRO Relief further provides that this stay extends to any “suit, action, or proceeding against the Stay Parties or their U.S. Interests” as well as “interfering with any of the Stay Parties’ U.S. Interests or agreements in the United States (if any),” subject to exceptions not relevant here. These aspects of the TRO Relief operate to stay all further proceedings in this case, including staying this Court’s issuance of an opinion.

As numerous courts have recognized, “[t]he plain language of Section 362 stays appellate proceedings in actions originally brought against the debtor, even when it is the debtor who files the appeal.” *In re Byrd*, 357 F.3d 433 (4th Cir. 2004); *accord, e.g. Farley v. Henson*, 2 F.3d 273, 275 (8th Cir.1993); *Sheldon v. Munford Inc.*, 902 F.2d 7 (7th Cir. 1990); *Ingersoll-Rand Financial Corp. v. Miller Mining Co.*, 817 F.2d 1424 (9th Cir. 1987); *Teachers Ins. & Annuity Ass’n v. Butler*, 803 F.2d 61 (2d Cir. 1986); *Marcus, Stowell & Beye v. Jefferson Inv. Corp.*, 797 F.2d 227 (5th Cir. 1986); *Cathey v. Johns-Manville Sales Corp.*, 711 F.2d 60 (6th Cir. 1983); *Assoc. of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446 (3d Cir. 1982). That rule applies to all stages of the appellate process, including when an appellate court has heard oral argument but has not yet issued its decision. *Ellison v. Nw. Eng’g Co.*, 707 F.2d 1310 (11th Cir. 1983). As this appeal arises from an asbestos lawsuit filed against ACL, the TRO Relief bars continuation of the action or proceeding and thus stays this appeal.

ACL recognizes that in *Southern Bank & Trust Co. v. Harley*, 295 S.C. 423 (S.C. 1988), this Court treated the debtors’ filing of a petition for writ of certiorari as an independent action that was not barred by the § 362(a) automatic stay, even though the underlying litigation involved a

claim against the debtor. That decision stands contrary to the great weight of authority, including the uniform view of the U.S. courts of appeals, and should not be followed here.

As the Eighth Circuit explained in *Farley v. Henson*, 2 F.3d 273 (8th Cir. 1993), *Southern Bank & Trust*'s reasoning cannot be squared with the plain statutory text, as the "continuation" of a "proceeding against the debtor" is naturally read to refer to the debtor's appeal from an adverse ruling. Moreover, "the policies underlying the automatic stay are implicated even though the debtor, by bringing the appeal, seeks to escape or mitigate the adverse judgment," as the debtor holds an interest in the outcome of the appeal. *Id.* at 275. Finally, "to apply or not apply the automatic stay depending upon whether an appeal was taken 'against' or 'by' a debtor would be impractical and unworkable." *Id.* That is particularly so in a situation involving multiple parties and layers of appellate review, like that here. For those reasons, to the extent the Court believes it is bound by *Southern Bank & Trust Co.*, it should reconsider that holding. *See, e.g., Planned Parenthood S. Atl. v. State*, 440 S.C. 465, 478 (2023) ("[T]he assertion of stare decisis does not automatically foreclose a court from reviewing a precedent to ensure it was correctly decided.").

But even if *Southern Bank & Trust Co.* remains good law, this case should still be stayed. In declining to apply the stay in that case, *Southern Bank & Trust Co.* reasoned that the result of the appeal there could not "possibly result in a [diminution] of the estates," and therefore did not affect the automatic stay's aims to "give the debtor a 'breathing spell' and to allow for the orderly administration of the estate." 295 S.C. at 425. That reasoning does not hold here. For one thing, the outcome of this appeal will inevitably conflict with the TRO Relief, as this appeal will address the validity of a receivership that the Bankruptcy Court has now stayed in its entirety. Relatedly, the receivership depends on the existence of ACL property within the State, but to the extent such property exists, the TRO Relief places that property in ACL's control and bars the Receiver from

purporting to administer or otherwise interfere with that property. *See* TRO, ¶¶ 1,3. Given these and other potential conflicts between the TRO Relief and the potential disposition of this appeal, the case should be stayed.

CONCLUSION

For the foregoing reasons, the Court should take no further steps in this appeal, as it is stayed by the TRO. Continuation of this matter would conflict with the TRO Relief and interfere with the orderly administration of ACL's bankruptcy proceedings.

Respectfully submitted,

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