

May 19, 2025

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S.C. SUPREME COURT

Via Email Only – supctfilings@sccourts.org

The Honorable Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RE: *John A. Tibbs v. Asbestos Corporation Limited*
Appellate Case Nos. 2023-001461, 2024-000916, 2024-001423, 2024-001499,
2024-002114, 2024-002116, 2024-002117, 2025-000052

Dear Ms. Howard:

Please allow this correspondence to serve as the Receiver's response to the Court's May 8, 2025 inquiry as to whether any of the above-referenced appeals are stayed in light of the May 6, 2025 New York Bankruptcy Court Orders.¹ The May 6, 2025 Orders of the New York Bankruptcy Court stay Appellate Case No. 2023-001461 in which Asbestos Corporation Limited ("ACL") is pursuing an appeal.² As outlined below, none of the remaining appellate cases listed in the Court's May 8, 2025 letter are stayed by the Bankruptcy Court Orders.

¹ On May 6, 2025, the New York Bankruptcy Court issued two orders: (1) Order Granting Provisional Relief, which CLMI transmitted to this Court on May 7, 2025, and (2) Temporary Restraining Order, which CLMI transmitted to this Court on May 12, 2025. The applicable stay language used in the orders is substantively the same. *Compare* Provisional Order at 4–5 with Temporary Restraining Order at 2–4.

² ACL, in its May 16, 2025 response to the Court, notes that in *Southern Bank & Trust Company v. Harley*, 295 S.C. 423, 368 S.E.2d 908 (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. However, the Receiver acknowledges that the provisional orders of the Bankruptcy Court impose a stay of Appellate Case No. 2023-001461 and, as such, declines to take a position to the contrary.

I. BANKRUPTCY PROCEEDINGS - QUÉBEC SUPERIOR COURT OF JUSTICE

On May 5, 2025, Certain London Market Insurers (“CLMI”)³ commenced an action in the province of Quebec, Canada by and through its *ex parte* Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order seeking to place their insured, Asbestos Corporation Limited (“ACL”), into proceedings under the Companies’ Creditors Arrangement Act (the “CCAA PROCEEDINGS”). Subsequently, on May 6, 2025, CLMI, added its insured, ACL as a Co-applicant and submitted an *ex parte* Amended Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order under the CCAA, which was granted on May 6, 2025.

II. BANKRUPTCY PROCEEDINGS - UNITED STATES BANKRUPTCY COURT (SOUTHERN DISTRICT OF NEW YORK)

On May 6, 2025, the United States Bankruptcy Court for the Southern District of New York issued an Order Granting Provisional Relief and a Temporary Restraining Order pursuant to 11 U.S.C. §§ 1519, 362 and 105(a) (“U.S. Bankruptcy Order”) upon *ex parte* motions of Raymond

³ CLMI includes the following entities: Certain Underwriters at Lloyd’s, London, Tenecom Limited (as successor to Winterthur Swiss Insurance Company, formerly known as Accident & Casualty Insurance Company of Winterthur, Switzerland, and to Yasuda Fire and Marine Insurance Company (UK) Limited and now known as Tenecom Ltd.), The Ocean Marine Insurance Company (as successor to liabilities of Commercial Union Assurance Company Limited, The Edinburgh Assurance Company, The Indemnity Marine Assurance Company Limited, The Northern Assurance Company Limited, The Road Transport & General Insurance Company Limited, United Scottish Insurance Company Limited, and The Victoria Insurance Company Limited), NRG Victory Reinsurance Limited, as successor to liabilities of New London Reinsurance Company Limited and The Scottish Lion Insurance Company Ltd., a company having its Registered Office at Suite 1, South Inch Business Centre, Shore Road, Perth, Scotland, PH2 8BW.

Chabot Inc., in its capacity as the duly appointed monitor and authorized foreign representative (“Canadian Monitor”) of debtor, Asbestos Corporation Limited. Notice of Stay Order Pursuant to Sections 105(A), 1519 and 362 of the Bankruptcy Code was served on the South Carolina Supreme Court by CLMI on May 7 and May 9, 2025. In the Temporary Restraining Order, the Court ordered that Section 362 of the Bankruptcy Code applies as to the Stay Parties to “stay and restrain all persons and entities” from commencing, continuing, and pursuing any action, order, or process against the Stay Parties and their U.S. interests “to the extent related to the Debtor.” The Stay Parties are: (1) Asbestos Corporation Limited (“ACL”), (2) Certain London Market Insurers (“CLMI”), and (3) Resolute Management, Inc. (“Resolute”).

III. EFFECT OF STAY ON PENDING APPEALS

A. Appellate Case No. 2023-001461 - (“ACL Appeal”)

The Court held a consolidated oral argument on February 11, 2025, in ACL’s appeal in *Tibbs* (Appellate Case No. 2023-001461).⁴ The parties involved in this appeal are Appellant Asbestos Corporation Limited, (“ACL”), Respondent Peter Protopapas, Duly Appointed Receiver for Asbestos Corporation Limited, and Amici Curiae Certain Underwriters at Lloyd’s, London and Certain London Market Insurance Companies (“CLMI”). The New York Bankruptcy Court’s order acts to stay ACL’s appeal in *Tibbs* (Appellate Case No. 2023-001461) which “is related to

⁴ Given the similarity of issues in a separate appeal arising from a different case, the Court heard at the same time, oral arguments in *Welch* (Appellate Case No. 2023-001096). See Nov. 14, 2024 Order, Appellate Case No. 20243-001461 (consolidating the cases “for the purposes of oral argument”). The *Welch* appeal involves the Atlas Turner receivership, and the parties are the Receiver for Atlas Turner, Plaintiff Donna B. Welch, and Atlas Turner, Inc. (Appellate Case No. 2023-001096). None of the parties in the *Welch* appeal are Stay Parties in the U.S. Bankruptcy Order.

the Debtor,” Asbestos Corporation Limited, and involves the Stay Parties. The New York order currently prevents this Court from ruling in Appellate Case No. 2023-001461 as to the ACL receivership.

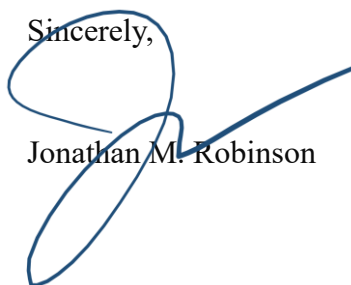
B. Appellate Case Nos. 2024-000916, 2024-001423, 2024-001499, 2024-002114, 2024-002116, 2024-002117, 2025-000052 - (“Cape Appeals”)

There are seven (7) Petitions for Certiorari in the *Tibbs* matter involving the Cape Receivership. The parties involved in these appeals are the Appellants Altrad Investment Authority S.A.S, Mohed Altrad, Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation and the Respondent Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. None of the parties in the Cape appeals are Stay Parties in the U.S. Bankruptcy Order. These appeals do not involve ACL, CLMI, or Resolute and are not related to ACL. Therefore, the Cape appeals are not affected by the New York Bankruptcy Court’s temporary injunction.⁵

The Receiver sincerely appreciates this Court’s time and careful consideration of these matters. Please let us know if the Court desires any additional information.

⁵ The Receiver disagrees with the Altrad appellants that Appellate Case Nos. 2024-002114 and 2025-000052 are stayed by the NY orders. These are interlocutory appeals from scheduling orders issued by the circuit court in the third-party action and do not relate in any way to ACL. These appeals do not involve the Stay Parties. To the extent that the Altrad appellants argue that *if* the Court rules in their favor in these two appeals then the *Tibbs* trial must be stayed after remittitur because they argue a trial should include ACL, the Altrad appellants may raise that argument at the appropriate time before the circuit court after this Court makes its ruling and remits the appeals.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish.

Jonathan M. Robinson

JMR/dlf

cc: All counsel of record via email only