

RECEIVED

Jun 04 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2024-001499, 2024-001423, 2024-000916, 2024-002114,
2024-002116, 2024-002117, 2025-000052

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

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.; Lowserve 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, Incl; 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; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

**MOTION TO STRIKE APPELLANTS’
“NOTICES OF SUPPLEMENTAL AUTHORITY”**

Pursuant to Rules 208(b)(7) and 240 of the South Carolina Appellate Court Rules, Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company

Limited, by and through its duly appointed Receiver Peter D. Protopapas (“the Receiver”) respectfully moves this Court to strike the “Notice of Supplemental Authority” filed by the Altrad defendants on June 4, 2025 and the “Notice of Supplemental Authority” filed by the Charter defendants on June 4, 2025. Pursuant to Rule 208(b)(7),

When pertinent and significant authorities come to the attention of a party after his initial brief(s) have been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy of all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to which the citations pertain, but the letter shall, **without argument**, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(emphasis added).

Appellants’ purported “Notice of Supplemental Authority” is entirely improper and spends seven to eight pages presenting argument to this Court regarding a decision filed by this Court in a separate receivership appeal.¹ It runs afoul of the limited nature of supplemental citations under

¹ This is not the first time that counsel for the Altrad defendants—on behalf of a separate client—has asserted that the Court is confused or does not understand the issues before the Court. In describing this Court’s order dismissing a certified appeal as interlocutory from the circuit court’s order denying a motion to dismiss and dissolve an asbestos receivership in *Childers v. Davis Mechanical Contractors, Inc., et al.*, Appellate Case No. 2023-000727, counsel for the Altrad defendants stated:

Travelers recognizes that the Supreme Court has recently dismissed an appeal of an order denying a motion to dissolve another receivership, *Payne & Keller*. But that unpublished decision does not appear to be supported by the plain language of South Carolina Code § 14-3-330(4),⁵ appears to conflict with the Supreme Court’s prior holdings, and does not address in any way a situation, as here, where a receivership appointment over an active foreign company is allowed to “continue” during the pendency of an appeal involving the appointment order itself in direct violation of Rule 205, SCACR, and the exclusive jurisdiction it vests in this Court over all issues involved in that appeal.

Travelers respectfully requests that the Court reconsider its April 12, 2024 Order dismissing this appeal. The order on appeal is immediately appealable. If the Court disagrees, to assist the Bench and Bar going forward, Travelers respectfully asks this Court to provide some guidance by way of a written opinion, explaining how or why an order that both “continu[es]” an unlawful receivership appointment in the face of a written

Rule 208(b)(7). The “notice” is so full of argument that Appellants even include argument in the *caption* of the document by including incorrect and misleading parentheticals after each case number in order to misrepresent the nature of their interlocutory appeals. It’s more akin to a petition for rehearing of the *Welch* opinion than a notice of supplemental authority. A supplemental authority should only include a citation to the authority, a reference to the page number of the brief or issue the authority applies to, and a short non-argumentative statement for the reason of the citation. Appellants’ “notices” do not comply with the rules. Instead, it’s numerous pages of pure argument.

Appellants make numerous misrepresentations in the “notice,” including as to the nature of the interlocutory appeals pending before this Court. There are currently seven petitions for writs of certiorari pending in the *Tibbs* matter involving the Cape Receivership. All seven pending petitions involve interlocutory orders of the circuit court and have been dismissed by the Court of Appeals as interlocutory. Appellants began filing interlocutory appeals in the *Tibbs* case in September 2023 and have since appealed almost every order issued by the circuit court. Since the commencement of this action on June 30, 2023, there have been twenty (20) notices of appeal filed involving the Cape receivership, all of which have been dismissed by the Court of Appeals. Appellants parties have filed numerous Petitions for Cert from these dismissals with this Court. A complete list of petitions currently pending involving these appellants in this Court is below:

motion to dissolve the appointment, and “continu[es]” a receivership over an active foreign company during the pendency of an appeal of the initial appointment order in violation of Rule 205, SCACR, is not immediately appealable under South Carolina Code § 14-3-330(4).

Travelers’ Petition for Rehearing, *Travelers Casualty and Surety Company v. Asbestos Corporation Limited*, Appellate Case No. 2024-000341 (filed May 6, 2024).

	Court	Appellate Case No.	Short Title	Group	Type	Filed Date	Status
1	Supreme Court	2025-000052	Tibbs v. Asbestos Corporation	Certiorari - COA	Common Pleas	1/9/2025	Ready for Consideration
2	Supreme Court	2024-002114	John Tibbs v. Asbestos Corporation	Certiorari - COA	Common Pleas	12/16/2024	Ready for Consideration
3	Supreme Court	2024-002116	Tibbs v. Asbestos Corporation Limited	Certiorari - COA	Common Pleas	12/16/2024	Ready for Consideration
4	Supreme Court	2024-002117	Tibbs v. Asbestos Corporation Limited	Certiorari - COA	Common Pleas	12/16/2024	Ready for Consideration
5	Supreme Court	2024-001499	Tibbs v. Asbestos Corporation Limited	Certiorari - COA	Common Pleas	9/11/2024	Ready for Consideration
6	Supreme Court	2024-001423	Tibbs v. Asbestos Corporation Limited	Certiorari - COA	Common Pleas	8/30/2024	Ready for Consideration
7	Supreme Court	2024-000916	John Tibbs v. Asbestos Corporation Limited	Certiorari - COA	Common Pleas	6/3/2024	Ready for Consideration

In their “notices,” Appellants continue to misconstrue the nature of the circuit court’s orders in order to manufacture appealability where there is none. The seven (7) appeals involve an order denying motions to dismiss, discovery orders, and scheduling orders. Appellants have appealed every order of the circuit court in an effort to halt the case and interfere with the authority of the South Carolina courts by seeking favorable rulings in foreign jurisdictions and threatening the Receiver for fulfilling his court-appointed duties.² Trial in this case has been set and

² The Receiver has filed a motion seeking sanctions against the Altrad defendants for this contemptuous conduct.

rescheduled multiple times following Appellants’ refusal to participate in litigation.³ The petitions should be denied by the Court without consideration of Appellants’ recent improper filing.

Accordingly, the Court should strike the “notices” and require Appellants, like all other litigants, to comply with the procedural rules of our state. If the Court does not strike the “notices” and wishes to consider Appellants’ arguments, the Receiver requests the Court allow him an opportunity to provide a fulsome response to the arguments that is similarly not limited by Rule 208(b)(7). However, the Receiver continues to believe the Court does not need to reopen arguments in these straightforward improper appeals involving interlocutory orders of the circuit court.

By: /s/ Jonathan M. Robinson
Jonathan M. Robinson
SMITH ROBINSON, LLC
3200 Devine Street
Columbia, SC 29205
803-254-5445
jon.robinson@smithrobinsonlaw.com

John T. Lay, Jr., SC Bar No. 64526
Gray T. Culbreath, SC Bar No. 11907
Lindsay A. Joyner, SC Bar No. 77437
Eleanor L. Jones, SC Bar No. 104678
GALLIVAN, WHITE & BOYD, P.A.
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ejones@gwblawfirm.com

³ Out of the total number of days this case has been pending, it has spent nearly 70% of those days on appeal from an order denying a motion to dismiss the third-party complaint and dissolve the receivership—the very same type of order this Court has ruled is not immediately appealable after rejecting some of the very same arguments by some of the very same counsel in *Childers v. Davis Mechanical Contractors, et al.*, Appellate Case No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership).

(803) 779-1833

Troy S. Brown
Dana E. Becker
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semlinger@morganlewis.com
(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

*Attorneys for Respondent Cape PLC, individually
and as successor in interest to Cape Asbestos
Company Limited, n/k/a Cape Intermediate Holdings
Ltd. by and through its duly appointed Receiver
Peter D. Protopapas*

June 4, 2025
Columbia, South Carolina