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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. 2025-002120, and 2025-002121

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.; Anglo 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 THE PETITIONERS' RESPONSES
TO MOTION TO EXTEND BRIEFING DEADLINES**

Pursuant to Rule 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 Responses to Motion to Extend Briefing Deadlines filed by the Altrad Petitioners and the Charter Petitioners on October 30, 2025. The Responses are procedurally and substantively deficient.

Procedurally, the Responses are untimely. Petitioners purport to respond to a motion that is no longer pending before the Court. The Court granted the Tibbs Respondents' motion to extend briefing deadlines on October 29, 2025.

Substantively, the Responses are not even facially responsive to the already-granted motion. Indeed, Petitioners "take no position" on the motion to extend briefing deadlines. Instead, they make brand-new arguments entirely unrelated to the Tibbs Respondents' motion for an extension.

Petitioners appear to ask the Court for some nebulous unrelated relief. In the Altrad Petitioners' case, they "suggest[] . . . an interim stay or interim injunction." (Altrad Resp. at p. 5.) In the Charter Petitioners' case, they want "the Court . . . to consider some measure to maintain the status quo." (Charter Resp. at p. 4.) However, neither Petitioner has moved for any relief, cited to any law allowing such relief, or made any substantive arguments that they are entitled to any relief.

Shortly after the Tibbs Respondent filed the motion to extend briefing deadlines, Petitioners notified the Court that they intended "to respond to this motion by noon tomorrow, if that suits the Court. Thank you." *See* October 29, 2025 Email Communications from Todd Carroll and Vic Rawl. The Court then granted the extension without awaiting Petitioners' Responses. Petitioners nonetheless filed their Responses to submit additional material to this Court regarding a settlement between the Receiver and third-party defendants who, following the dismissal of their

interlocutory appeal in June 2024,¹ have chosen to participate in the case in accordance with South Carolina law and voluntarily entered into a settlement agreement with the Receiver prior to trial on October 20, 2025. The repeated “updates” by Petitioners to this Court with filings occurring in the circuit court following the June remand of the *Tibbs* case illustrate the improper piecemeal nature of the appellate activity in this case, including the most recent interlocutory Petitions, despite the Court’s stated desire to deal with the merits of issues properly before it. *See* June 26, 2025 Order, Appellate Case No. 2024-001423; *see also Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (explaining appellate rules related to interlocutory orders are “construed narrowly” with the goal of avoiding “circuitous litigation and needless appeals”); *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) (“Piecemeal appeals should be avoided[.]”)

Aside from disregarding this Court’s admonitions about continued interlocutory appeals and remand of this matter, and the trial court’s admonitions about the same, Petitioners once again seek to bypass the fact-finding trial court and replace it with arguments of counsel and unsupported allegations. In so doing, the Altrad Petitioners mischaracterize the South Carolina Asbestos Victims Compensation QSF LLC Operating Agreement (“Operating Agreement”). The Operating Agreement does not give the Receiver “the ability to waive service of claims against CIHL and invite lawsuits against it in South Carolina.” (Altrad Resp. at p. 3.) The Operating Agreement must be read as a whole—not a single sentence removed without context by the Altrad Petitioners. The Operating Agreement governs a fund for South Carolina victims. The Operating Agreement gives the Receiver, *as manager of the fund*, the ability to evaluate and, if meritorious, resolve, claims relating to alleged bodily injuries resulting from Cape asbestos products *in South Carolina*,

¹ *See* Appellate Case No. 2023-002008.

without the claimant first having served Cape. Therefore, the Operating Agreement gives the Manager of the Fund the discretion to waive the service requirement *as a condition precedent to paying meritorious claims from the Fund*. Viewed rightly, the Receiver is not establishing “a qualified ‘settlement fund’ in the name of CIHL,” nor is he seizing Cape’s boardroom. Instead, in accordance with the receivership appointment, the Receiver has marshaled Cape’s assets here in South Carolina and established a fund that will be available to satisfy any liabilities Cape may have in South Carolina related to asbestos bodily injuries, including in the *Park* and *Tibbs* matters.² Even the U.K. Court noted the settlement recognizes the Receiver’s authority is limited to claims asserted in South Carolina and the resulting Qualified Settlement Fund is limited to claims brought in South Carolina. *See* Mann Oct. 20 Order at ¶ 16, attached to Altrad’s Consent to the Receiver’s Second Motion to Supplement the Record, Appellate Case Nos. 2024-001423 and 2024-001499 (Oct. 20, 2025).

As to the Charter Petitioners’ arguments that exclusive jurisdiction over these matters is with the appellate courts, this is not true. This Court remanded the case to the circuit court on June 26, 2025, “for all purposes” and clarified on September 25, 2025, that the circuit court can issue decisions on motions to approve settlement agreements. *See* Orders, Appellate Case No. 2024-001423. As to any arguments that the newest dismissed interlocutory appeal (Appellate Case No. 2025-002104) prevents the circuit court from approving the settlement, this also is not true. *See S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986) (rejecting an

² Petitioners also complain about the confidentiality of the settlement. As noted in the Receiver’s filing with circuit court this week, the Altrad Petitioners’ own counsel has previously advocated for sealing confidential settlement agreements for his insurance clients, as permitted by Rule 41.1(c), SCRCF. Those insurers, despite requests from the Receiver, refuse to disclose the terms of settlements in the asbestos docket. *See* The Receiver’s Response to the Altrad Defendants’ Objection to the Receiver’s Motions of October 28, 2025, attached to the Altrad Petitioners’ Oct. 30 Response.

appellant's argument that "the lower court was without jurisdiction to try the case prior to this Court's issuance of remittitur, since the filing of the notice of intent to appeal vested this Court with exclusive jurisdiction"). *See also Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992) ("When an order is interlocutory and not immediately appealable, the service and filing of a notice of intent to appeal does not transfer jurisdiction to the Supreme Court and does not stay the proceedings in the trial court."); *Brown v. Greenwood Sch. Dist. 50 Bd. Of Trustees*, 344 S.C. 522, 524–25, 544 S.E.2d 642, 643 (Ct. App. 2001) ("Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to the [appellate] [c]ourt ..." (quoting *Arnold*, 287 S.C. at 586, 340 S.E.2d at 536)); *Fibkins v. Fibkins*, 303 S.C. 112, 116–17, 399 S.E.2d 158, 161 (Ct. App. 1990) (finding order interlocutory and did not stay proceedings in the lower court); Order, *Childers*, Appellate Case No. 2023-000727 (filed Sept. 8) (finding order denying motion to dismiss and dissolve receivership and receivership not stayed during the pendency of appeal).

Further, the Anglo American De Beers third-party defendants' dismissed appeal was remitted on June 6, 2024, and those third-party defendants have been participating in this case since that date and are the parties to the settlement agreement. *See* Appellate Case No. 2023-002008. Further, the Court has not accepted original jurisdiction over the latest newly filed Petitions as briefing is still ongoing.

Petitioners' improper response to the already-granted motion to extend deadlines should be stricken. Petitioners have not lodged any substantive response to the actual request for extension, and their attempts to use the opportunity to attack a settlement with another party should be rejected. Petitioners have no legally recognized interest in another party's settlement with the Receiver, nor can they disguise their objections as arguments on behalf of the company in

receivership.³ Petitioners' position is nothing like that of the petitioner in *Welch*: there, the company in receivership—Atlas—was the party attacking the appointment of a receiver tasked with identifying and collecting certain of Atlas's assets. Here, the Petitioners are third-party Defendants who have repeatedly *said* that they have no obligation to, and therefore will not, participate in this litigation because they do not agree with the court's jurisdictional rulings. However, their refusal to participate in jurisdictional discovery along with their intermittent objections at the trial and appellate court level on issues, including these Responses, illustrate they have been actively, albeit selectively, participating. They cannot have it both ways.

Accordingly, the Receiver requests this Court strike Petitioners' responses as (1) they take no position on the motion for extension, (2) the response is another attempt to seek appellate review of interlocutory orders, and (3) the motion was decided before the responses were filed.

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

³ The Altrad Petitioners' objection to the establishment of a settlement fund to address Cape's historic liabilities to South Carolina asbestos victims is particularly ironic because Altrad has acknowledged these Cape liabilities in the United Kingdom and established a significantly fund there to pay legitimate claims from British claimants. (Altrad's 4th Supp. App. p. 184, Oct. 13 Order at p. 40, *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759.) But in South Carolina, a state where the Altrad group presently does business from a brick and mortar location today, Altrad refuses to acknowledge these legacy liabilities (or even to participate in litigation in South Carolina courts) to such an extreme that Altrad is now objecting to the Receiver's ability to pay legitimate Cape-related asbestos claims from injured South Carolina asbestos cancer victims using money derived from a settlement with other companies. The real question is why would Altrad object to the Receiver's compensating injured South Carolina asbestos victims for Cape asbestos claims using a Qualified Settlement Fund created with other people's money?

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
(803) 779-1833

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*

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November 3, 2025.