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Feb 06 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2025-002104

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.; BARRETT'S 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; 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.; PLA3TINUM 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; and THE SPARROWS GROUP, LLC,..... *Third-Party Defendants,*

Of which CHARTER CONSOLIDATED LTD.; ESAB CORPORATION; CENTRAL MINING & INVESTMENT CORPORATION LTD; MOHED ALTRAD; and ALTRAD INVESTMENT AUTHORITY SAS, are the *Appellants.*

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* ON BEHALF OF
DOWNSTREAM CORPORATE DEFENDANTS IN SUPPORT OF RESPONDENT**

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Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules (“SCACR”), Santa Fe Braun, Inc.; Rentavla LLC; ITT LLC; Goulds Pumps LLC; Dovers LLC; and Velvet V Corporation (collectively, “Downstream Corporate Defendants” or “*Amici*”), by and through undersigned counsel, hereby move for leave to file an *amici curiae* brief in support of Respondent in the above-captioned matter. A proposed Brief of *Amici Curiae* accompanies this Motion and is submitted contemporaneously herewith for conditional filing in accordance with Rule 213, SCACR. For the reasons set forth below, the Court should grant this Motion and accept the accompanying Brief of *Amici Curiae*.

REASONS FOR GRANTING THE MOTION

I. IDENTITY AND INTEREST OF PROPOSED *AMICI CURIAE*

Proposed *Amici* are sued as manufacturers of industrial equipment and suppliers of industrial services. Velvet V, Goulds, Dovers, Rentavla, and ITT—or, in some cases, their corporate predecessors—are sued as manufacturers of industrial equipment, such as pumps, valves, compressors, and other similar component parts, which were installed in industrial facilities in South Carolina. Braun, for its part, is sued for its role in providing contracting services to some of these industrial facilities. Proposed *Amici* are each organized under the laws of a State other than South Carolina, with their principal place of business in another State.

Amici are frequently sued based on alleged tangential involvement decades ago, often based on their association with component products that contained limited amounts of (often encapsulated) asbestos. Several are named defendants in the underlying action. While *Amici*’s component parts (and related services) no doubt served important purposes, they were relatively insignificant in size and comparatively minor in terms of alleged asbestos content, particularly compared to the raw materials and products distributed by Appellants and other entities that

formed the “headwaters” of the asbestos-related stream of commerce and supply chain. Nevertheless, in this case and others, the main manufacturers of asbestos-containing thermal insulation products are now bankrupt, dissolved, or otherwise defunct, or are foreign entities that have historically (and strategically) avoided the practical reach of South Carolina courts.

As recurrent defendants in legacy asbestos litigation in South Carolina, in cases where upstream actors evade participation, *Amici*’s perspective will assist the Court in evaluating the equitable and policy considerations supporting receiverships that ensure upstream actors participate meaningfully and contribute proportionally to settlements and judgments involving South Carolina exposures and injuries.

The Downstream Corporate Defendants have direct and practical (and admittedly pecuniary) interests in the Court’s resolution of issues related to the scope and propriety of receiverships employed to ensure participation of defunct, foreign, or otherwise evasive asbestos entities and the equitable allocation of liability among responsible parties. They have a substantial stake in the availability of receiverships that preserve litigation-relevant assets and ensure meaningful participation by those primarily responsible for historical asbestos supply and installation.

II. UTILITY AND DESIRABILITY OF PROPOSED *AMICI CURIAE* BRIEF

The Downstream Corporate Defendants seek to offer their unique perspective for the Court’s consideration and to address the practical implications of receiverships on other defendants. To this end, the proposed brief provides on-the-ground insight regarding the issues presently before the Court. *Amici* address allocation fairness and deterrence—policy concerns articulated by this Court in related contexts—demonstrating how receiverships prevent disproportionate burden-shifting to less-culpable defendants when dominant upstream actors avoid

jurisdiction. It offers a distinct perspective of downstream defendants regularly involved in legacy asbestos litigation in South Carolina.

The proposed Brief of *Amici Curiae* will assist the Court by providing a perspective grounded in the practical application of South Carolina tort law and equitable principles. Specifically, the brief explains how receiverships serve a critical function in: (1) ensuring that defunct, dissolved, foreign, or otherwise evasive entities participate in litigation through court-appointed fiduciaries and (2) preventing the inequitable shifting of liability to downstream or peripheral defendants, parties that otherwise risk bearing disproportionate liability not because of (or in correlation to) any culpability but because they remain solvent and amenable to suit. The accompanying brief does not duplicate the parties' arguments but instead addresses the broader systemic consequences that arise when truly responsible entities evade accountability.

The Downstream Corporate Defendants' proposed Brief of *Amici Curiae* seeks to aid the Court by explaining how, absent effective receiverships, downstream or tangentially implicated defendants face disproportionate burdens when primary wrongdoers evade jurisdiction, become defunct, or attempt to shield assets from asbestos claimants. The brief addresses South Carolina tort and equitable principles bearing on fair allocation of responsibility and the role of receiverships in preventing evasion.

Notwithstanding their unwanted involvement in serial asbestos-related litigation in South Carolina, the Downstream Corporate Defendants take exception to Appellants' characterizations of the receivership proceedings in South Carolina and their assertions that the process has been unfair. Contrary to Appellants' implications and characterizations of Respondent's position as adverse (if not hostile) to traditional business interests, from *Amici's* perspective, Respondent has

efficiently and effectively utilized his authority to advance the principles of equity and ensure the administration of justice.

From a policy standpoint, full participation by potentially responsible parties does not, *ipso facto*, increase the injured party's recovery or the defendants' total financial exposure. After all, "[i]t is widely accepted there can only be one satisfaction for an injury or wrong." *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 539, 905 S.E.2d 380, 395 (2024) (Kittredge, C.J., concurring in part and dissenting in part). However, were the Court to credit Appellants' arguments, it would effectively give a "hall pass" to those who strategically evade accountability and force the Downstream Corporate Defendants to absorb their corresponding financial liability, creating a perverse incentive structure to encourage jurisdictional avoidance and penalize active participants solely on account of their solvency. Accordingly, the Downstream Corporate Defendants wish to ensure that the Court understands and appreciates that the loudest voices do not necessarily speak for, or represent the shared assessment of, all defendants.

The accompanying conditionally filed Brief of *Amici Curiae*—which is confined to the issues on appeal, will not expand the record, and complies with Rules 208(b) and 211, SCACR—is intended to assist the Court in evaluating the corresponding equitable considerations and practical implications associated with the parties' arguments. Courts have recognized the utility of *amicus* briefs that provide unique industry perspectives and policy context. See *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 131–32 (3d Cir. 2002) (Alito, J.). Where, as here, the matter involves significant public and private interests, permitting *amicus* participation is particularly appropriate. See *Ex Parte Brown*, 393 S.C. 214, 225, 711 S.E.2d 899, 904 (2011); see also *The Lite House, Inc. v. J.C. Roy Co.*, 309 S.C. 50, 52 n.1, 419 S.E.2d 817, 818 n.1 (Ct. App. 1992) (noting that *amicus curiae* brief "insured a complete presentation of the issues raised" and

“greatly simplified [the court’s] task of addressing them”). Therefore, the Downstream Corporate Defendants’ Motion does not provide any reason for the Court to depart from its “standard practice of accepting *amici* briefs.” *Savannah Riverkeeper v. S.C. Dep’t of Health & Env’t Control*, 400 S.C. 196, 207, 733 S.E.2d 903, 909 (2012) (Kittredge, J., dissenting).

CONCLUSION

WHEREFORE, for the foregoing reasons, the Downstream Corporate Defendants respectfully submit that the Court should grant this Motion and accept the accompanying Brief of *Amici Curiae* for filing as of the date of this Motion.

Respectfully submitted,

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s/Thomas A. Limehouse, Jr.

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February 6, 2026
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