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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

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

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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.*

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**BRIEF OF *AMICI CURIAE* DOWNSTREAM CORPORATE DEFENDANTS  
IN SUPPORT OF RESPONDENT**

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## STATEMENT OF INTEREST

Santa Fe Braun, Inc.; Rentavla LLC; ITT LLC; Goulds Pumps LLC; Dovers LLC; and Velvet V Corporation (collectively, “Downstream Corporate Defendants” or “*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 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 providing contractual services to some of these industrial facilities. The Downstream Corporate Defendants 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 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.

In the modern era of asbestos litigation, many principal “upstream” actors in this case and in other contexts—those entities that mined, milled, or distributed raw asbestos or sold high-content asbestos-containing thermal insulation materials—are defunct, dissolved, bankrupt, foreign, or otherwise evasive entities that have historically (and strategically) avoided the practical reach of South Carolina courts. This structural reality leaves *Amici* and similarly situated “downstream” corporate entities—which would otherwise be nonexistent parties or nominal

defendants if participation and contribution were based on traditional principles of tort law—shouldering the bulk of the litigation burdens, with liability tied to solvency, untethered to the fundamental concepts of causation and comparative fault.

As recurrent defendants in legacy asbestos litigation in South Carolina, in cases where upstream actors evade participation, *Amici*'s perspective is intended 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 by elusive 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.

Contrary to Appellants' implications and characterizations of Respondent's position as adverse (if not hostile) to traditional business interests, the Downstream Corporate Defendants support the critical role of receiverships in ensuring that upstream entities participate meaningfully in the judicial process, thereby preventing unfair burden-shifting to downstream defendants that remain solvent and amenable to jurisdiction.

#### **STATEMENT OF ISSUES ON APPEAL AND STANDARD OF REVIEW**

For present purposes, *Amici* hereby adopt Respondent's Statement of Issues on Appeal and Standard of Review. Resp. Am. Br. at 1, 19–20.

## SUMMARY OF ARGUMENT

Receiverships are a traditional, flexible tool of equity that South Carolina courts deploy to secure participation by defunct, dissolved, or foreign corporations whose conduct or products are alleged to have caused in-state injuries. The receivership at issue serves two vital functions: (1) it ensures such entities have an appropriate representative before the court; and (2) it prevents disproportionate burden shifting onto downstream or peripheral defendants—entities like *Amici* that remain solvent and amenable to suit but are less culpable relative to upstream actors.

Receiverships such as the one challenged here are essential to the fair and orderly administration of justice in South Carolina asbestos litigation. They ensure that elusive corporate actors—many of which were the primary sources of, and central contributors to, asbestos exposures in the State—can be brought before South Carolina courts through a court-appointed officer appointed to manage their participation, often by marshaling assets that were originally intended to be available for that very purpose.

Without receiverships, primary wrongdoers would evade accountability, and downstream or tangentially implicated defendants—like *Amici*—would shoulder disproportionate liability solely by virtue of their continued existence and jurisdictional presence rather than any correlation to culpability. The receivership here furthers those principles and provides a necessary mechanism to preserve both equity and the integrity of South Carolina’s judicial processes. Appellants’ criticism of the receivership process does not reflect the experience of *Amici*, which have observed the Receiver’s administration to be efficient, fair, and consistent with the equitable purposes underlying South Carolina receivership law.

## ARGUMENT

### **I. Receiverships Legally and Equitably Align Liability with Culpability to Avoid Penalizing Downstream Corporate Defendants.**

South Carolina tort law is grounded in principles of fairness and equitable allocation. But when upstream entities evade accountability, downstream defendants remain as the only solvent targets. This results in distorted litigation dynamics, converting peripheral defendants into primary compensation sources and allocating liability based on solvency rather than established principles of causation and fault. *Amici*—situated at the downstream end of the historical asbestos supply chain—have repeatedly observed that without court-supervised mechanisms to bring upstream entities back into litigation, the burdens associated with settlements and verdicts fall disproportionately on them, despite allegations of their products having contained or involved only limited (often-encapsulated) asbestos content.

South Carolina has embraced comparative fault and proportional responsibility as cornerstones of its tort system. *See* S.C. Code Ann. § 15-38-15 (abolishing joint and several liability in most circumstances and requiring allocation of fault among tortfeasors); *see also Fitzer v. Greater Greenville S.C. Young Men’s Christian Ass’n*, 277 S.C. 1, 3, 282 S.E.2d 230, 231 (1981) (“There is no tenet more fundamental in our law than liability follows the tortious wrongdoer.”), *superseded in part by statute*, Act. No. 461, 1994 S.C. Acts 4963. Relatedly, South Carolina law recognizes rights of contribution among joint tortfeasors. S.C. Code Ann. § 15-38-20. These statutes reflect a clear legislative intent and represents an unequivocal expression of public policy: tortfeasors should bear liability commensurate with their degree of fault. *See* 2025 S.C. Acts No. 42 (amending S.C. Code Ann. § 15-38-15 to provide for apportionment of fault “among defendants *and tortfeasors*” (emphasis added)). Stated otherwise, liability should be allocated according to actual responsibility—not as a function of the convenience of collection.

Notwithstanding this analytical framework, when responsible manufacturers or contractors are able (if not incentivized) to evade litigation through bankruptcy, dissolution, relocation, or restructuring, it undermines that statutory scheme and public policy. Therefore, absent an equitable mechanism such as receiverships, remaining defendants—often peripheral actors—are exposed to liability far exceeding their actual culpability, with financial exposure untethered to causation and without full contribution available as a recourse.

Although the injured parties have often been viewed as the ultimate beneficiaries of this equitable authority, they are not alone. As recurrent defendants in legacy asbestos litigation in South Carolina, in cases where upstream actors evade participation, *Amici* also benefit from targeted receiverships that ensure upstream actors participate meaningfully and contribute proportionally to settlements and judgments involving South Carolina exposures and injuries.

From Downstream Corporate Defendants' perspective, these receiverships advance the equitable goal of preventing entities that profited from asbestos-related commercial activity from evading accountability, while also safeguarding against the risk of overburdening less culpable defendants that remain solvent and subject to suit. *Amici* and similarly situated entities are often named not because of primary responsibility, but because they are among the few remaining viable defendants. This dynamic threatens to supplant tort law in favor of a jurisdiction- or solvency-based liability allocation—allowing plaintiffs' counsel to target the most accessible defendants rather than those whose conduct caused or materially contributed to the alleged injuries. It also frustrates the State's comparative fault regime, offending both substantive tort law and traditional equitable principles. Receiverships mitigate this distortion by keeping truly responsible entities in the case, promoting equitable settlements, and reducing the pressure on marginal defendants to compensate for injuries they did not principally or proximately cause. They also ensure that

elusive corporate actors can be brought before the court through a court-appointed officer appointed to manage their participation, often by identifying and marshaling assets that were originally intended to be available for that very purpose. *See PCS Nitrogen, Inc. v. Continental Casualty Co.*, 436 S.C. 254, 269–70, 871 S.E.2d 590, 598 (2022).

Traditional tort principles require that liability be proportionate to a defendant’s culpability and causal contribution to the plaintiff’s injury. *See* Restatement (Second) of Torts §§ 431, 433 (Am. L. Inst.). Where defendants whose products were the primary source of asbestos exposure evade suit solely due to jurisdictional objections, shifting the resulting financial burden onto peripheral parties is legally improper. After all, jurisdiction is not a substantive determination of fault. Allowing procedural obstacles to dictate substantive liability transforms tort law from a fault-based system into, at best, a game of fortuity—penalizing those who are present rather than those who are responsible. *Cf. Urena v. Nationwide Ins. Co. of Am.*, No. 2:13-CV-03544-DCN, 2017 WL 735583, at \*12 (D.S.C. Feb. 24, 2017), *amended*, 2017 WL 3142517 (D.S.C. June 16, 2017) (“The court prefers that cases be decided on their merits and has no desire to encourage parties to engage in jurisdictional ambush or sandbagging.”). Equity does not sanction a solvency-based approach to liability (or endorse the resulting incentive structure) simply because the most culpable actors are intentionally absent.

## **II. Without Effective Receiverships, Disproportionate Liability Shifts to Downstream Corporate Defendants.**

From a public policy standpoint, it is imperative to view receiverships in the broader context of legacy asbestos litigation, where the absence of responsible manufacturers and contractors is not accidental. At this point, one cannot credibly challenge that asbestos miners, thermal-insulation manufacturers, and insulation contractors, including those in receivership, had superior knowledge of the health hazards associated with asbestos. Nevertheless, these “upstream”

entities often continued to market it to industrial equipment manufacturers and construction companies for its fire retardant and insulation capabilities. When those insulation manufacturers filed for bankruptcy decades ago, the equipment manufacturers and construction companies, among others, were forced to bear the bulk of the asbestos tort liabilities.

Due in large part to the financial burdens associated with their outsized role in asbestos litigation, many downstream defendants have also been forced to declare bankruptcy, thereby eliminating those entities and their potential “shares” as sources of contribution in resolving claims. Receiverships, however, provide the opportunity to reengage with these insulation manufacturers and insulation contractors and reduce the overall burden on corporate tort defendants that otherwise have borne full financial responsibility for the decisions driven by the upstream entities. Because the receivership entities often used raw asbestos fibers or high-temperature thermal insulation in large quantities and had superior knowledge of the health hazards of asbestos, their involvement also affords corporate tort defendants the chance to assert cross-claims and alternate-exposure defenses that would not otherwise be available in their absence. As these corporate bankruptcies are becoming increasingly common, receiverships help ensure that the entire burden of a verdict or settlement will not be borne by the few remaining corporate tort defendants and can instead be spread among the entities in receivership and others with liability for the case at issue.

The receivership entities, once located and operating properly in the tort system, allow *Amici* and others to sit at a full table rather than a shrinking table that is still responsible for the plaintiff’s damages. Receiverships simply help restore the intended balance by ensuring all potentially culpable defendants’ assets remain available for contribution commensurate with their comparative fault.

Contrary to Appellants’ characterizations of the receivership process as “legally indefensible,” Altrad App. Br. at 44, and “creating international havoc,” Altrad App. Br. at 50, *Amici’s* on-the-ground experience in South Carolina tells a different story. In *Amici’s* view, receiverships are not a mechanism to increase overall financial exposure or circumvent jurisdictional boundaries by acting as “a roving collections agent.” Altrad App. Br. at 4, 48. Full participation by all 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); *see also Riley v. Ford Motor Co.*, 414 S.C. 185, 195–96, 777 S.E.2d 824, 830 (2015) (“A non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action.”); *Rutland v. S.C. Dep’t of Transp.*, 400 S.C. 209, 217, 734 S.E.2d 142, 146 (2012) (“Compensatory damages are intended to make the plaintiff whole, not to punish the tortfeasor.”). Therefore, stated otherwise, the cost of dinner should largely stay the same; the check simply gets split among all diners at a full table.

In sum, these receiverships remain an important tool to prevent fraud, preserve assets, and protect against disproportionate liability for the Downstream Corporate Defendants and others similarly situated. Although Appellants seek to portray receiverships as adverse (if not hostile) to traditional business interests, the Downstream Corporate Defendants support the critical role of these receiverships in ensuring that upstream entities participate meaningfully in the judicial process, thereby preventing unfair burden-shifting to downstream defendants that remain solvent and amenable to jurisdiction.

**CONCLUSION**

For the foregoing reasons, the Court should confirm the Receiver's authority to ensure that intentionally elusive entities participate meaningfully in legacy asbestos litigation and contribute proportionally to any corresponding settlements or judgments, commensurate with their actual liability.

Respectfully submitted,

LIMEHOUSE LLC

s/Thomas A. Limehouse, Jr.

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