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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-002006
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs, ... Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton 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; Orporation 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, Inc.; 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,
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of which

Asbestos Corporation Limited is the.....	Appellant,
--	------------

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,
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of which

Mohed Altrad and Altrad Investment Authority SAS are the..... Appellants.

APPENDIX TO ALTRAD DEFENDANTS’ OPPOSITION TO MOTION TO DISMISS
INJUNCTION APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and MARGARET B. TIBBS,	)	
	)	Civil Action No. 2023-CP-40-01759
Plaintiffs,	)	
	)	
v.	)	
	)	
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	<u>THIRD-PARTY DEFENDANT</u>
	)	<u>ALTRAD INVESTMENT</u>
CAPE PLC, individually and as successor in	)	<u>AUTHORITY'S RESPONSES AND</u>
interest to CAPE ASBESTOS COMPANY	)	<u>OBJECTIONS TO RECEIVER'S FIRST</u>
LIMITED, by and through its duly appointed	)	<u>SET OF INTERROGATORIES AND</u>
Receiver Peter D. Protopapas,	)	<u>FIRST SET OF REQUESTS FOR</u>
	)	<u>PRODUCTION</u>
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

Third-Party Defendant Altrad Investment Authority SAS (“Third-Party Defendant”) hereby responds to the Receiver’s first set of discovery requests. By so responding, Third-Party Defendant does not waive, but instead specifically preserves, all objections previously made regarding these proceedings through its written motions, oral arguments, and responsive pleadings, including *inter alia* that the Court lacks personal jurisdiction over Third-Party Defendant, that the Court lacks subject matter jurisdiction, that the Receiver was unlawfully appointed, that the Receiver lacks standing, and that the Receiver’s claims fail under Rules 12(b) and 14, SCRPC.

RESERVATION OF RIGHTS

Third-Party Defendant does not waive, but instead specifically preserves, its right to supplement these objections and serve further objections to any definition, instruction, interrogatory or request for production at a later date, including but not limited to objections based on the attorney-client, attorney work-product, joint-defense, and common-interest privileges; any other privilege that may be implicated in any way; irrelevance; overbreadth; undue burden and disproportionality; being cumulative and duplicative; scope; vagueness; prematurity; seeking discovery not in the possession, custody, or control of Third-Party Defendant; seeking discovery in the possession of other defendants, third-party defendants, and/or non-parties; seeking discovery obtainable with equal or greater facility from other sources; seeking discovery that may be derived or ascertained from documents already within the Receiver's knowledge, possession or control; seeking discovery of information that does not exist or no longer exists; seeking discovery regarding alleged events that occurred decades before Third-Party Defendant came into existence and/or decades before Third-Party Defendant had any alleged connection with Cape PLC; seeking discovery that cannot be disclosed or produced under the laws of foreign jurisdictions; seeking discovery on issues which are not ripe for adjudication; seeking discovery on matters of opinion, legal contentions, or questions of law; and being oppressive and harassing.

To the extent Third-Party Defendant's appeal of the Court's December 6, 2023 Order denying the Third-Party Defendants' motions to dissolve the receivership and motions to dismiss for lack of personal jurisdiction is denied and an appellate court no longer has exclusive jurisdiction over all matters affected by the appeal, Third-Party Defendant will supplement its objections to the Receiver's Interrogatories and Requests for Production and will provide responses, subject to the objections asserted.

INTERROGATORIES

1. Please name—and identify the citizenship of—every individual or entity whose citizenship is attributed to you as a member or otherwise.

Response: Third-Party Defendant objects to this discovery request on the grounds that the circuit court lacks jurisdiction to proceed with this matter at the present time, as all issues regarding the purported Receiver’s appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals. *See* Rule 205, SCACR (providing that “[u]pon the service of the notice of appeal, the appellate court ***shall have exclusive jurisdiction*** over the appeal” (emphasis added)); *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘***matters affected by the appeal***’” (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal.”); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address

matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter affected by the appeal' under Rules 205 and 241(a).").

Third-Party Defendant previously notified the circuit court and all parties, including the Receiver, of the pendency of the appeal by filing a Notice of Notice of Appeal. An appellate ruling in Third-Party Defendant's favor would result in the dissolution of the receivership. A dissolution of the receivership, in turn, would preclude the purported Receiver from pursuing *all* the claims in this third-party action against *all* remaining Third-Party Defendants—including this Third-Party Defendant—thereby stripping the purported Receiver of any alleged authority to seek or engage in any discovery, let alone the overbroad, disproportionate, and unduly burdensome, as well as in some cases harassing, discovery that the purported Receiver seeks here. All third-party claims against the Third-Party Defendants, and all discovery sought from this Third-Party Defendant—including the First Set of Interrogatories and Requests for Production and any deposition notice—accordingly are "affected by the appeal" under Rule 205, SCACR, and the circuit court lacks jurisdiction over them.

Third-Party Defendant further objects to this discovery request because, even if Rule 205, SCACR, does not provide the appellate court exclusive jurisdiction over the entire third-party action and thus prohibit discovery from proceeding before this Court (it does), a motion to stay discovery and for a protective order is pending before this Court, which exempts Third-Party Defendant from responding to discovery until the motion has been finally resolved. *Baughman v. AT&T Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991); *see also* Hearing Transcript at 174:21–25 (Oct. 25, 2023) (stating that discovery would be stayed "until we deal with the motions to dismiss and motions for entry of default"). The pending motion for protective order is based on

the fact that “because the Receiver was improperly appointed and does not have standing to bring its third-party claims, it has no authority to take discovery from the [Third-Party Defendant], in any form or under any mechanism, or from any other third-party defendant.” That issue is squarely before the Court of Appeals; therefore, there is no jurisdiction at the trial level to proceed, including considering the pending motion for a protective order, until the appeal is finally resolved.

2. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

6. List the names and addresses of any expert witnesses whom the party proposed to use as a witness at the trial of the case.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

REQUESTS FOR PRODUCTION

1. Produce all Your articles of incorporation and any amendments thereto since Your formation.

Response: Third-Party Defendant objects to this discovery request on the grounds that the circuit court lacks jurisdiction to proceed with this matter at the present time, as all issues regarding the purported Receiver's appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals. *See* Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court ***shall have exclusive jurisdiction*** over the appeal" (emphasis added)); *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over '***matters affected by the appeal***'" (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that "[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal," and explaining that this rule "deprives the lower court of the power to address a particular issue, or 'matter,' during the pendency of the appeal"); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App.

2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).”).

Third-Party Defendant previously notified the circuit court and all parties, including the Receiver, of the pendency of the appeal by filing a Notice of Notice of Appeal. An appellate ruling in Third-Party Defendant’s favor would result in the dissolution of the receivership. A dissolution of the receivership, in turn, would preclude the purported Receiver from pursuing *all* the claims in this third-party action against *all* remaining Third-Party Defendants—including this Third-Party Defendant—thereby stripping the purported Receiver of any alleged authority to seek or engage in any discovery, let alone the overbroad, disproportionate, and unduly burdensome, as well as in some cases harassing, discovery that the purported Receiver seeks here. All third-party claims against the Third-Party Defendants, and all discovery sought from this Third-Party Defendant—including the First Set of Interrogatories and Requests for Production and any deposition notice—accordingly are “affected by the appeal” under Rule 205, SCACR, and the circuit court lacks jurisdiction over them.

Third-Party Defendant further objects to this discovery request because, even if Rule 205, SCACR, does not provide the appellate court exclusive jurisdiction over the entire third-party action and thus prohibit discovery from proceeding before this Court (it does), a motion to stay

discovery and for a protective order is pending before this Court, which exempts Third-Party Defendant from responding to discovery until the motion has been finally resolved. *Baughman v. AT&T Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991); *see also* Hearing Transcript at 174:21–25 (Oct. 25, 2023) (stating that discovery would be stayed “until we deal with the motions to dismiss and motions for entry of default”). The pending motion for protective order is based on the fact that “because the Receiver was improperly appointed and does not have standing to bring its third-party claims, it has no authority to take discovery from the [Third-Party Defendant], in any form or under any mechanism, or from any other third-party defendant.” That issue is squarely before the Court of Appeals; therefore, there is no jurisdiction at the trial level to proceed, including considering the pending motion for a protective order, until the appeal is finally resolved.

2. Produce all bylaws that You have adopted and any amendments thereto since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

3. Produce all resolutions for the approval of all bylaws that You have adopted since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

4. Produce all organizational charts ever prepared or in place and involving You or any Third-Party Defendant.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

5. Produce all Documents related to Your organizational structure or reporting structure, including with any affiliated Entity or any Third-Party Defendant.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

6. Produce all Documents related to Your control, ownership, or interaction with any Entity partially owned by You or operating as a majority-owned subsidiary.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

7. Produce all internal operating agreements that have been adopted by You or otherwise apply or have applied to Your operations.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

8. Produce the minutes of all meetings of Your board of directors and any committees or subcommittees thereof since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

9. Produce all Documents and Communications distributed or presented to the participants of any meetings of Your board of directors or any committees or subcommittees thereof since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

10. Produce Documents sufficient to show the identities, appointment, or compensation of all Your directors, executives, or officers since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

11. Produce all Documents related to Your corporate history, including with respect to Your management, ownership, or form of organization.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

12. Produce all Documents summarizing the business activities of You or any Third-Party Defendant to any internal or external Entity or Person, including to any actual or prospective equity holder, debt holder, or regulatory authority, or in any trade press or other media.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

13. Produce all Documents related to any enterprise risk-management (ERM) framework adopted by You or otherwise that has been applicable to You or any Third-Party Defendant, including (i) any reports provided to Your board of directors or any committee or subcommittee thereof under such ERM framework, and (ii) any Documents related to Your or a Third-Party Defendant's exposure to liability risks, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

14. Produce all Marketing Materials and related Documents of You or any Third-Party Defendant intended for receipt or viewing, or otherwise distributed, in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

15. Produce all Marketing Materials of You or any Third-Party Defendant intended for receipt or viewing, or otherwise distributed, in the United States of America, including the State of South Carolina, that contained statements about the health risks associated with exposure to asbestos, including all drafts of those Marketing Materials.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

16. Produce all Marketing Materials of You or any Third-Party Defendant intended for receipt or viewing, or otherwise distributed, in the United States of America, including the State of South Carolina, that contained inaccurate or incomplete statements about the health risks associated with exposure to asbestos, including all drafts of those Marketing Materials.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

17. Produce all Documents related to coordination of marketing or other business activities involving You and any Third-Party Defendant or any affiliated Entity thereof, including

with respect to shared or coordinated use of assets, financing, personnel, logistics, advertising (e.g., branding), or policies, guidance, and practices.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

18. Produce all Documents related to formal or informal policies, guidance, or practices for the purchase of liability insurance identifying You as a named insured or additional insured or otherwise covering Your potential liability in the United States of America or elsewhere in the world.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

19. Produce all Documents reflecting, concerning, or otherwise relating to the adequacy of liability insurance identifying You as a named insured or additional insured or otherwise covering Your potential liability in the United States of America or elsewhere in the world in connection with asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

20. Produce all Communications concerning, reflecting, or otherwise relating to discussions about the need for liability insurance identifying You as a named insured or additional insured or otherwise covering Your potential liability in the United States of America or elsewhere in the world in connection with asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

21. Produce all Documents, including formal or informal policies, guidance, or practices, related to Your capitalization or limitations or caps on Your capitalization, and the reasons for such policies, guidance, or practices.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

22. Produce all Documents, including goals, objectives, targets, or efforts to limit Your capitalization, and the reasons for such goals, objectives, targets, or efforts.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

23. Produce all Documents, including formal or informal policies, guidance, or practices, related to Your standard or normal processes for avoiding or responding to legal actions in the United States of America, including asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

24. Produce all Documents related to any contacts or activities of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof with or within the State of South Carolina, including any owned or leased real estate, business registrations, returns for or payments of taxes, contracts for the sale or shipment of materials or goods, use of facilities or property of any kind within the State of South Carolina, or other interactions with any Persons or Entities in the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

25. Produce all Documents related to Your ownership or lease of real estate in the United States of America, or the ownership or leasing of real estate on Your behalf.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

26. Produce all Documents related to formal or informal policies, guidance, or practices relating to the travel of directors, executives, officers, employees, or representatives of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof from foreign countries into or within the United States of America, including into or within the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

27. Produce all Documents, including any policies, guidance, and practices, created or modified since Your formation related to the retention and destruction of Documents or the retention, storage, deletion, and archiving of Electronic Data, including e-mail, test messages, voicemails, or other Communications, including as related to Documents that were produced or created as part of discovery in other asbestos-related litigation and subsequently destroyed as stipulations to settlements.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

28. Produce all Documents, including any policies, guidance, and practices, created or modified since Your formation related to the use of personal electronic devices and messaging applications for business purposes.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

29. Produce all Documents, including any policies, guidance, and practices, created or modified since Your formation related to the manner in which You have maintained, organized, or stored Your electronic and hardcopy files.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

30. Produce all insurance agreements with any insurer or reinsurer that may be liable to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. See S.C. R. Civ. P. 26(b)(2).

Response: Please see Response to Request for Production 1 and Reservation of Rights.

31. Produce all formal or informal indemnity agreements or promises that may apply to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment or pay for the cost of Your defense.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

32. Produce all Communications concerning, reflecting, or otherwise relating to Your tender of any claim or lawsuit to any other Third-Party Defendant, or any affiliated Entity thereof, or their insurer(s) or reinsurer(s), including any responses or replies.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

33. Produce all corporate records or ledgers evidencing the issuance of stock at any time since Your formation, to whom it was issued, and the date(s) of issue.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

34. Produce all corporate records or ledgers evidencing the identity and address of each Person or Entity who has owned stock in You, the consideration paid or promised for the stock, and the date(s) on which the consideration was paid or promised.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

35. Produce all corporate records or ledgers evidencing the payment of dividends to any shareholder since Your formation, to whom the dividends were paid, the amounts paid, and the date(s) of payment.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

36. Produce all Documents related to formal or informal policies, guidance, or practices for the payment or non-payment of dividends to shareholders.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

37. Produce the minutes of all meetings of Your shareholders.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

38. Produce all Documents showing any money or property that was contributed to You in exchange for common stock or any other ownership interest in You or Your revenue, profits, or other income sources.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

39. Produce your annual statements or annual reports since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

40. Produce all drafts of and Communications concerning Your annual statements or annual reports since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

41. Produce Documents sufficient to show Your capitalization since Your formation, including any source of financing (whether debt, equity, or any guarantee of the same).

Response: Please see Response to Request for Production 1 and Reservation of Rights.

42. Produce all Your income statements since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

43. Produce all Your balance sheets since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

44. Produce all Your cash-flow statements since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

45. Produce all Your owner or equity statements since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

46. Produce all bank statements for Your main operating account(s) since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

47. Produce all internal and external actuarial reports prepared for You since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

48. Produce Documents sufficient to show the makeup of all of Your equity investments since Your formation, including the names of any Entities in which You have a direct or indirect equity interest.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

49. Produce all Documents concerning, reflecting, or otherwise relating to the health risks associated with exposure to asbestos, including (i) all studies conducted by You or on Your behalf related to health hazards posed by exposure to asbestos, (ii) any consideration of whether to finance or otherwise support such actual or potential studies, (iii) any consideration of whether to publicize or limit disclosure or distribution of the findings of such studies or information generally with respect to health risks associated with asbestos, or (iv) other Documents related to private or public research, studies, or publications of health risks associated with asbestos, including by Richard Gaze, Hubert Wyers, Ian Webster, Tony Gibbs, Christopher Wagner, Richard Doll, and other Persons.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

50. Produce all Documents concerning, reflecting, or otherwise relating to Your awareness of the health risks associated with exposure to asbestos.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

51. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof concerning, reflecting, or otherwise relating to the health risks associated with exposure to asbestos.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

52. Produce all Documents concerning, reflecting, or otherwise relating to Your statements about the health risks associated with exposure to asbestos, including Your statements intended to minimize, or that had the effect of minimizing, those health risks.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

53. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof concerning, reflecting, or otherwise relating to strategies to minimize the health risks associated with exposure to asbestos.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

54. Produce all Documents that concern, reflect, refer to, or otherwise relate to any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

55. Produce all Communications between or among any of Your directors, executives, officers, employees, or representatives relating to any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof, including by miners and their families in South Africa, by employees and their families in the United Kingdom, or by any Persons and their families in the United States of America.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

56. Produce all Documents, including agendas, meeting presentations, and meeting minutes, concerning, reflecting, referring to, or otherwise relating to any meetings at which any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof were discussed.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

57. Produce all Documents related to Your asbestos-related actual or contingent liabilities, including related to the calculation or setting of any reserves, including all actuarial studies that You have conducted, or that another Person or Entity has conducted, to estimate Your current or future asbestos-related liabilities (including all drafts of such studies).

Response: Please see Response to Request for Production 1 and Reservation of Rights.

58. Produce all Documents concerning, reflecting, referring to, or otherwise relating to any inspections, analyses, or audits conducted by You or on Your behalf in any investigation regarding any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

59. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof related to asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

60. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof concerning, reflecting, or otherwise relating to strategies to avoid or limit liability exposure, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

61. Produce all Communications concerning, reflecting, or otherwise relating to the strategy of using corporate separateness to avoid or limit liability exposure, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

62. Produce all Communications concerning, reflecting, or otherwise relating to the strategy of creating, establishing, forming, or using affiliated Entities to avoid or limit liability exposure, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

63. Produce Documents sufficient to identify all law firms and individual counsel that You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof has retained, engaged, or consulted in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

64. Produce Documents sufficient to identify all law firms and individual counsel that You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof has retained, engaged, or consulted regarding asbestos-related claims, including any efforts to avoid or limit liability exposure for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

65. Produce all Documents or Communications related to efforts by any law firm or individual counsel that You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof has retained, engaged, or consulted regarding organizational or capital changes to Cape PLC, You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof in the United States of America.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

66. Produce Documents sufficient to identify all legal, equitable, or administrative actions either brought by or against You in the United States of America, including in South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

67. Produce all Documents related to Cape PLC or any affiliated Entity thereof, including related to (i) Charter PLC's sale of equity in Cape PLC in or around 1996, and (ii) the Altrad Group's acquisition of Cape PLC in or around September 2017.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

68. Produce all Documents that concern, reflect, refer to, or otherwise relate to any of the facts or allegations referenced in the Complaint, including as related to Ludwig Breitmeyer or the organizational changes, financial interests, and business activities alleged in the Complaint.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

69. Produce all Documents related to any direct or indirect relationship that You presently have or have had with Cape PLC, any Third-Party Defendant, or any affiliated Entity thereof, including (i) any contractual, fiduciary, or investment relationships, or (ii) as to any overlap in Persons serving as directors, officers, employees, representatives, or insurance brokers.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

70. Produce all Documents related to any transaction involving, or assignment or transfer of, assets, liabilities, equity rights, contracts, intellectual property rights, or anything else of value involving Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

71. Produce all agreements between You and any Third-Party Defendant, or any affiliated Entity thereof, including employment agreements, shareholder agreements, partnership agreements, consulting agreements, joint-venture agreements, indemnity agreements, defense agreements, hold-harmless agreements, or independent-contractor agreements.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

72. Produce all Documents related to any of the Oppenheimer Third-Party Defendants or the Charter Third-Party Defendants, including all Communications among any of Your directors, executives, officers, employees, or representatives concerning or related to any of the Oppenheimer Third-Party Defendants or the Charter Third-Party Defendants.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

73. Produce all Documents related to the Altrad Group's acquisition of Cape PLC in or around September 2017, including any Documents made available or Communications made as part of the transaction's due diligence.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

74. Produce all Documents related to the Altrad Group's July 2022 acquisition of the Sparrows Group, including any Documents made available or Communications made as part of the transaction's due diligence.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

75. Produce all Documents related to litigation between Cape PLC and any insurance or reinsurance carrier arising out of asbestos-related claims, including the litigation involving Cape PLC, Aviva PLC, Zurich Insurance Group, and RSA Group that was settled in or around February 2017.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

76. Produce all Documents related to the Altrad Group's current or historic financial interest(s) in You, including Documents concerning the decision, rationale, or risks (including liability risks) for the Altrad Group to have an interest in You.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

77. Produce all Documents related to the decision, rationale, or risks (including liability risks) in forming The Sparrows Group LLC.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

78. Produce all Documents related to the business strategies of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof in, for, related to, or affecting any part of the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

79. Produce all Documents related to the strategies of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof to avoid exposure to litigation in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

80. Produce all Documents related to visits by or the physical presence of any directors, executives, or officers of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

81. All Documents (including Communications) concerning, reflecting, involving, or otherwise relating to asbestos-related trade associations, advocacy groups, or other Entities, including representatives and members thereof, including (i) Johns-Manville Corporation, Turner & Newall, Raybestos Manhattan, Inc., Westinghouse Electric Corp., Babcock & Wilcox, Dow Chemical, and other manufacturers or distributors of asbestos products, and (ii) the Asbestos Textile Institute, the Asbestos Cement Producers' Association, the Asbestosis Research Council, the Asbestos Information Committee, the Asbestos Information Association/North America, the South African Asbestos Producers Advisory Committee (including Fritz Baunach), the Asbestos

Publicity Committee (as established by the South African Minister for Mines), and Hill & Knowlton.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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Attorneys for Mohed Altrad and Altrad
Investment Authority SAS

January 5, 2024

CERTIFICATE OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Third-Party Defendant Altrad Investment Authority's Responses and
Objections to Receiver's First Set of Interrogatories and First Set of
Requests for Production

Parties Served:

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Attorneys for Plaintiffs

By: /s/ M. Todd Carroll

January 5, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and MARGARET B. TIBBS,	)	
	)	Civil Action No. 2023-CP-40-01759
Plaintiffs,	)	
	)	
v.	)	
	)	
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	<u>THIRD-PARTY DEFENDANT MOHED</u>
	)	<u>ALTRAD’S RESPONSES AND</u>
CAPE PLC, individually and as successor in	)	<u>OBJECTIONS TO RECEIVER’S FIRST</u>
interest to CAPE ASBESTOS COMPANY	)	<u>SET OF INTERROGATORIES AND</u>
LIMITED, by and through its duly appointed	)	<u>FIRST SET OF REQUESTS FOR</u>
Receiver Peter D. Protopapas,	)	<u>PRODUCTION</u>
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	
	)	

Third-Party Defendant Mohed Altrad (“Third-Party Defendant”) hereby responds to the Receiver’s first set of discovery requests. By so responding, Third-Party Defendant does not waive, but instead specifically preserves, all objections previously made regarding these proceedings through its written motions, oral arguments, and responsive pleadings, including *inter alia* that the Court lacks personal jurisdiction over Third-Party Defendant, that the Court lacks subject matter jurisdiction, that the Receiver was unlawfully appointed, that the Receiver lacks standing, and that the Receiver’s claims fail under Rules 12(b) and 14, SCRPC.

RESERVATION OF RIGHTS

Third-Party Defendant does not waive, but instead specifically preserves, its right to supplement these objections and serve further objections to any definition, instruction, interrogatory or request for production at a later date, including but not limited to objections based on the attorney-client, attorney work-product, joint-defense, and common-interest privileges; any other privilege that may be implicated in any way; irrelevance; overbreadth; undue burden and disproportionality; being cumulative and duplicative; scope; vagueness; prematurity; seeking discovery not in the possession, custody, or control of Third-Party Defendant; seeking discovery in the possession of other defendants, third-party defendants, and/or non-parties; seeking discovery obtainable with equal or greater facility from other sources; seeking discovery that may be derived or ascertained from documents already within the Receiver's knowledge, possession or control; seeking discovery of information that does not exist or no longer exists; seeking discovery regarding alleged events that occurred decades before Third-Party Defendant came into existence and/or decades before Third-Party Defendant had any alleged connection with Cape PLC; seeking discovery that cannot be disclosed or produced under the laws of foreign jurisdictions; seeking discovery on issues which are not ripe for adjudication; seeking discovery on matters of opinion, legal contentions, or questions of law; and being oppressive and harassing.

To the extent Third-Party Defendant's appeal of the Court's December 6, 2023 Order denying the Third-Party Defendants' motions to dissolve the receivership and motions to dismiss for lack of personal jurisdiction is denied and an appellate court no longer has exclusive jurisdiction over all matters affected by the appeal, Third-Party Defendant will supplement its objections to the Receiver's Interrogatories and Requests for Production and will provide responses, subject to the objections asserted.

INTERROGATORIES

1. Please name—and identify the citizenship of—every individual or entity whose citizenship is attributed to you as a member or otherwise.

Response: Third-Party Defendant objects to this discovery request on the grounds that the circuit court lacks jurisdiction to proceed with this matter at the present time, as all issues regarding the purported Receiver’s appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals. *See* Rule 205, SCACR (providing that “[u]pon the service of the notice of appeal, the appellate court ***shall have exclusive jurisdiction*** over the appeal” (emphasis added)); *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘***matters affected by the appeal***’” (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal.”); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address

matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter affected by the appeal' under Rules 205 and 241(a).").

Third-Party Defendant previously notified the circuit court and all parties, including the Receiver, of the pendency of the appeal by filing a Notice of Notice of Appeal. An appellate ruling in Third-Party Defendant's favor would result in the dissolution of the receivership. A dissolution of the receivership, in turn, would preclude the purported Receiver from pursuing *all* the claims in this third-party action against *all* remaining Third-Party Defendants—including this Third-Party Defendant—thereby stripping the purported Receiver of any alleged authority to seek or engage in any discovery, let alone the overbroad, disproportionate, and unduly burdensome, as well as in some cases harassing, discovery that the purported Receiver seeks here. All third-party claims against the Third-Party Defendants, and all discovery sought from this Third-Party Defendant—including the First Set of Interrogatories and Requests for Production and any deposition notice—accordingly are “affected by the appeal” under Rule 205, SCACR, and the circuit court lacks jurisdiction over them.

Third-Party Defendant further objects to this discovery request because, even if Rule 205, SCACR, does not provide the appellate court exclusive jurisdiction over the entire third-party action and thus prohibit discovery from proceeding before this Court (it does), a motion to stay discovery and for a protective order is pending before this Court, which exempts Third-Party Defendant from responding to discovery until the motion has been finally resolved. *Baughman v. AT&T Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991); *see also* Hearing Transcript at 174:21–25 (Oct. 25, 2023) (stating that discovery would be stayed “until we deal with the motions to dismiss and motions for entry of default”). The pending motion for protective order is based on

the fact that “because the Receiver was improperly appointed and does not have standing to bring its third-party claims, it has no authority to take discovery from the [Third-Party Defendant], in any form or under any mechanism, or from any other third-party defendant.” That issue is squarely before the Court of Appeals; therefore, there is no jurisdiction at the trial level to proceed, including considering the pending motion for a protective order, until the appeal is finally resolved.

2. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

6. List the names and addresses of any expert witnesses whom the party proposed to use as a witness at the trial of the case.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Response: Please see Response to Interrogatory 1 and Reservation of Rights.

REQUESTS FOR PRODUCTION

1. Produce all Your articles of incorporation and any amendments thereto since Your formation.

Response: Third-Party Defendant objects to this discovery request on the grounds that the circuit court lacks jurisdiction to proceed with this matter at the present time, as all issues regarding the purported Receiver's appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals. *See* Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court ***shall have exclusive jurisdiction*** over the appeal" (emphasis added)); *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over '***matters affected by the appeal***'" (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that "[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal," and explaining that this rule "deprives the lower court of the power to address a particular issue, or 'matter,' during the pendency of the appeal"); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App.

2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).”).

Third-Party Defendant previously notified the circuit court and all parties, including the Receiver, of the pendency of the appeal by filing a Notice of Notice of Appeal. An appellate ruling in Third-Party Defendant’s favor would result in the dissolution of the receivership. A dissolution of the receivership, in turn, would preclude the purported Receiver from pursuing *all* the claims in this third-party action against *all* remaining Third-Party Defendants—including this Third-Party Defendant—thereby stripping the purported Receiver of any alleged authority to seek or engage in any discovery, let alone the overbroad, disproportionate, and unduly burdensome, as well as in some cases harassing, discovery that the purported Receiver seeks here. All third-party claims against the Third-Party Defendants, and all discovery sought from this Third-Party Defendant—including the First Set of Interrogatories and Requests for Production and any deposition notice—accordingly are “affected by the appeal” under Rule 205, SCACR, and the circuit court lacks jurisdiction over them.

Third-Party Defendant further objects to this discovery request because, even if Rule 205, SCACR, does not provide the appellate court exclusive jurisdiction over the entire third-party action and thus prohibit discovery from proceeding before this Court (it does), a motion to stay

discovery and for a protective order is pending before this Court, which exempts Third-Party Defendant from responding to discovery until the motion has been finally resolved. *Baughman v. AT&T Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991); *see also* Hearing Transcript at 174:21–25 (Oct. 25, 2023) (stating that discovery would be stayed “until we deal with the motions to dismiss and motions for entry of default”). The pending motion for protective order is based on the fact that “because the Receiver was improperly appointed and does not have standing to bring its third-party claims, it has no authority to take discovery from the [Third-Party Defendant], in any form or under any mechanism, or from any other third-party defendant.” That issue is squarely before the Court of Appeals; therefore, there is no jurisdiction at the trial level to proceed, including considering the pending motion for a protective order, until the appeal is finally resolved.

2. Produce all bylaws that You have adopted and any amendments thereto since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

3. Produce all resolutions for the approval of all bylaws that You have adopted since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

4. Produce all organizational charts ever prepared or in place and involving You or any Third-Party Defendant.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

5. Produce all Documents related to Your organizational structure or reporting structure, including with any affiliated Entity or any Third-Party Defendant.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

6. Produce all Documents related to Your control, ownership, or interaction with any Entity partially owned by You or operating as a majority-owned subsidiary.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

7. Produce all internal operating agreements that have been adopted by You or otherwise apply or have applied to Your operations.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

8. Produce the minutes of all meetings of Your board of directors and any committees or subcommittees thereof since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

9. Produce all Documents and Communications distributed or presented to the participants of any meetings of Your board of directors or any committees or subcommittees thereof since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

10. Produce Documents sufficient to show the identities, appointment, or compensation of all Your directors, executives, or officers since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

11. Produce all Documents related to Your corporate history, including with respect to Your management, ownership, or form of organization.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

12. Produce all Documents summarizing the business activities of You or any Third-Party Defendant to any internal or external Entity or Person, including to any actual or prospective equity holder, debt holder, or regulatory authority, or in any trade press or other media.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

13. Produce all Documents related to any enterprise risk-management (ERM) framework adopted by You or otherwise that has been applicable to You or any Third-Party Defendant, including (i) any reports provided to Your board of directors or any committee or subcommittee thereof under such ERM framework, and (ii) any Documents related to Your or a Third-Party Defendant's exposure to liability risks, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

14. Produce all Marketing Materials and related Documents of You or any Third-Party Defendant intended for receipt or viewing, or otherwise distributed, in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

15. Produce all Marketing Materials of You or any Third-Party Defendant intended for receipt or viewing, or otherwise distributed, in the United States of America, including the State of South Carolina, that contained statements about the health risks associated with exposure to asbestos, including all drafts of those Marketing Materials.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

16. Produce all Marketing Materials of You or any Third-Party Defendant intended for receipt or viewing, or otherwise distributed, in the United States of America, including the State of South Carolina, that contained inaccurate or incomplete statements about the health risks associated with exposure to asbestos, including all drafts of those Marketing Materials.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

17. Produce all Documents related to coordination of marketing or other business activities involving You and any Third-Party Defendant or any affiliated Entity thereof, including

with respect to shared or coordinated use of assets, financing, personnel, logistics, advertising (e.g., branding), or policies, guidance, and practices.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

18. Produce all Documents related to formal or informal policies, guidance, or practices for the purchase of liability insurance identifying You as a named insured or additional insured or otherwise covering Your potential liability in the United States of America or elsewhere in the world.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

19. Produce all Documents reflecting, concerning, or otherwise relating to the adequacy of liability insurance identifying You as a named insured or additional insured or otherwise covering Your potential liability in the United States of America or elsewhere in the world in connection with asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

20. Produce all Communications concerning, reflecting, or otherwise relating to discussions about the need for liability insurance identifying You as a named insured or additional insured or otherwise covering Your potential liability in the United States of America or elsewhere in the world in connection with asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

21. Produce all Documents, including formal or informal policies, guidance, or practices, related to Your capitalization or limitations or caps on Your capitalization, and the reasons for such policies, guidance, or practices.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

22. Produce all Documents, including goals, objectives, targets, or efforts to limit Your capitalization, and the reasons for such goals, objectives, targets, or efforts.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

23. Produce all Documents, including formal or informal policies, guidance, or practices, related to Your standard or normal processes for avoiding or responding to legal actions in the United States of America, including asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

24. Produce all Documents related to any contacts or activities of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof with or within the State of South Carolina, including any owned or leased real estate, business registrations, returns for or payments of taxes, contracts for the sale or shipment of materials or goods, use of facilities or property of any kind within the State of South Carolina, or other interactions with any Persons or Entities in the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

25. Produce all Documents related to Your ownership or lease of real estate in the United States of America, or the ownership or leasing of real estate on Your behalf.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

26. Produce all Documents related to formal or informal policies, guidance, or practices relating to the travel of directors, executives, officers, employees, or representatives of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof from foreign countries into or within the United States of America, including into or within the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

27. Produce all Documents, including any policies, guidance, and practices, created or modified since Your formation related to the retention and destruction of Documents or the retention, storage, deletion, and archiving of Electronic Data, including e-mail, test messages, voicemails, or other Communications, including as related to Documents that were produced or created as part of discovery in other asbestos-related litigation and subsequently destroyed as stipulations to settlements.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

28. Produce all Documents, including any policies, guidance, and practices, created or modified since Your formation related to the use of personal electronic devices and messaging applications for business purposes.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

29. Produce all Documents, including any policies, guidance, and practices, created or modified since Your formation related to the manner in which You have maintained, organized, or stored Your electronic and hardcopy files.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

30. Produce all insurance agreements with any insurer or reinsurer that may be liable to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. See S.C. R. Civ. P. 26(b)(2).

Response: Please see Response to Request for Production 1 and Reservation of Rights.

31. Produce all formal or informal indemnity agreements or promises that may apply to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment or pay for the cost of Your defense.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

32. Produce all Communications concerning, reflecting, or otherwise relating to Your tender of any claim or lawsuit to any other Third-Party Defendant, or any affiliated Entity thereof, or their insurer(s) or reinsurer(s), including any responses or replies.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

33. Produce all corporate records or ledgers evidencing the issuance of stock at any time since Your formation, to whom it was issued, and the date(s) of issue.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

34. Produce all corporate records or ledgers evidencing the identity and address of each Person or Entity who has owned stock in You, the consideration paid or promised for the stock, and the date(s) on which the consideration was paid or promised.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

35. Produce all corporate records or ledgers evidencing the payment of dividends to any shareholder since Your formation, to whom the dividends were paid, the amounts paid, and the date(s) of payment.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

36. Produce all Documents related to formal or informal policies, guidance, or practices for the payment or non-payment of dividends to shareholders.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

37. Produce the minutes of all meetings of Your shareholders.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

38. Produce all Documents showing any money or property that was contributed to You in exchange for common stock or any other ownership interest in You or Your revenue, profits, or other income sources.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

39. Produce your annual statements or annual reports since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

40. Produce all drafts of and Communications concerning Your annual statements or annual reports since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

41. Produce Documents sufficient to show Your capitalization since Your formation, including any source of financing (whether debt, equity, or any guarantee of the same).

Response: Please see Response to Request for Production 1 and Reservation of Rights.

42. Produce all Your income statements since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

43. Produce all Your balance sheets since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

44. Produce all Your cash-flow statements since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

45. Produce all Your owner or equity statements since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

46. Produce all bank statements for Your main operating account(s) since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

47. Produce all internal and external actuarial reports prepared for You since Your formation.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

48. Produce Documents sufficient to show the makeup of all of Your equity investments since Your formation, including the names of any Entities in which You have a direct or indirect equity interest.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

49. Produce all Documents concerning, reflecting, or otherwise relating to the health risks associated with exposure to asbestos, including (i) all studies conducted by You or on Your behalf related to health hazards posed by exposure to asbestos, (ii) any consideration of whether to finance or otherwise support such actual or potential studies, (iii) any consideration of whether to publicize or limit disclosure or distribution of the findings of such studies or information generally with respect to health risks associated with asbestos, or (iv) other Documents related to private or public research, studies, or publications of health risks associated with asbestos, including by Richard Gaze, Hubert Wyers, Ian Webster, Tony Gibbs, Christopher Wagner, Richard Doll, and other Persons.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

50. Produce all Documents concerning, reflecting, or otherwise relating to Your awareness of the health risks associated with exposure to asbestos.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

51. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof concerning, reflecting, or otherwise relating to the health risks associated with exposure to asbestos.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

52. Produce all Documents concerning, reflecting, or otherwise relating to Your statements about the health risks associated with exposure to asbestos, including Your statements intended to minimize, or that had the effect of minimizing, those health risks.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

53. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof concerning, reflecting, or otherwise relating to strategies to minimize the health risks associated with exposure to asbestos.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

54. Produce all Documents that concern, reflect, refer to, or otherwise relate to any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

55. Produce all Communications between or among any of Your directors, executives, officers, employees, or representatives relating to any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof, including by miners and their families in South Africa, by employees and their families in the United Kingdom, or by any Persons and their families in the United States of America.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

56. Produce all Documents, including agendas, meeting presentations, and meeting minutes, concerning, reflecting, referring to, or otherwise relating to any meetings at which any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof were discussed.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

57. Produce all Documents related to Your asbestos-related actual or contingent liabilities, including related to the calculation or setting of any reserves, including all actuarial studies that You have conducted, or that another Person or Entity has conducted, to estimate Your current or future asbestos-related liabilities (including all drafts of such studies).

Response: Please see Response to Request for Production 1 and Reservation of Rights.

58. Produce all Documents concerning, reflecting, referring to, or otherwise relating to any inspections, analyses, or audits conducted by You or on Your behalf in any investigation regarding any asbestos-related claims made against Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

59. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof related to asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

60. Produce all Communications between or among Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof concerning, reflecting, or otherwise relating to strategies to avoid or limit liability exposure, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

61. Produce all Communications concerning, reflecting, or otherwise relating to the strategy of using corporate separateness to avoid or limit liability exposure, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

62. Produce all Communications concerning, reflecting, or otherwise relating to the strategy of creating, establishing, forming, or using affiliated Entities to avoid or limit liability exposure, including for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

63. Produce Documents sufficient to identify all law firms and individual counsel that You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof has retained, engaged, or consulted in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

64. Produce Documents sufficient to identify all law firms and individual counsel that You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof has retained, engaged, or consulted regarding asbestos-related claims, including any efforts to avoid or limit liability exposure for asbestos-related claims.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

65. Produce all Documents or Communications related to efforts by any law firm or individual counsel that You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof has retained, engaged, or consulted regarding organizational or capital changes to Cape PLC, You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof in the United States of America.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

66. Produce Documents sufficient to identify all legal, equitable, or administrative actions either brought by or against You in the United States of America, including in South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

67. Produce all Documents related to Cape PLC or any affiliated Entity thereof, including related to (i) Charter PLC's sale of equity in Cape PLC in or around 1996, and (ii) the Altrad Group's acquisition of Cape PLC in or around September 2017.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

68. Produce all Documents that concern, reflect, refer to, or otherwise relate to any of the facts or allegations referenced in the Complaint, including as related to Ludwig Breitmeyer or the organizational changes, financial interests, and business activities alleged in the Complaint.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

69. Produce all Documents related to any direct or indirect relationship that You presently have or have had with Cape PLC, any Third-Party Defendant, or any affiliated Entity thereof, including (i) any contractual, fiduciary, or investment relationships, or (ii) as to any overlap in Persons serving as directors, officers, employees, representatives, or insurance brokers.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

70. Produce all Documents related to any transaction involving, or assignment or transfer of, assets, liabilities, equity rights, contracts, intellectual property rights, or anything else of value involving Cape PLC, You, any other Third-Party Defendant, or any affiliated Entity thereof.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

71. Produce all agreements between You and any Third-Party Defendant, or any affiliated Entity thereof, including employment agreements, shareholder agreements, partnership agreements, consulting agreements, joint-venture agreements, indemnity agreements, defense agreements, hold-harmless agreements, or independent-contractor agreements.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

72. Produce all Documents related to any of the Oppenheimer Third-Party Defendants or the Charter Third-Party Defendants, including all Communications among any of Your directors, executives, officers, employees, or representatives concerning or related to any of the Oppenheimer Third-Party Defendants or the Charter Third-Party Defendants.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

73. Produce all Documents related to the Altrad Group's acquisition of Cape PLC in or around September 2017, including any Documents made available or Communications made as part of the transaction's due diligence.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

74. Produce all Documents related to the Altrad Group's July 2022 acquisition of the Sparrows Group, including any Documents made available or Communications made as part of the transaction's due diligence.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

75. Produce all Documents related to litigation between Cape PLC and any insurance or reinsurance carrier arising out of asbestos-related claims, including the litigation involving Cape PLC, Aviva PLC, Zurich Insurance Group, and RSA Group that was settled in or around February 2017.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

76. Produce all Documents related to the Altrad Group's current or historic financial interest(s) in You, including Documents concerning the decision, rationale, or risks (including liability risks) for the Altrad Group to have an interest in You.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

77. Produce all Documents related to the decision, rationale, or risks (including liability risks) in forming The Sparrows Group LLC.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

78. Produce all Documents related to the business strategies of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof in, for, related to, or affecting any part of the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

79. Produce all Documents related to the strategies of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof to avoid exposure to litigation in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

80. Produce all Documents related to visits by or the physical presence of any directors, executives, or officers of You, any other Altrad Third-Party Defendant, or any affiliated Entity thereof in the United States of America, including the State of South Carolina.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

81. All Documents (including Communications) concerning, reflecting, involving, or otherwise relating to asbestos-related trade associations, advocacy groups, or other Entities, including representatives and members thereof, including (i) Johns-Manville Corporation, Turner & Newall, Raybestos Manhattan, Inc., Westinghouse Electric Corp., Babcock & Wilcox, Dow Chemical, and other manufacturers or distributors of asbestos products, and (ii) the Asbestos Textile Institute, the Asbestos Cement Producers' Association, the Asbestosis Research Council, the Asbestos Information Committee, the Asbestos Information Association/North America, the South African Asbestos Producers Advisory Committee (including Fritz Baunach), the Asbestos

Publicity Committee (as established by the South African Minister for Mines), and Hill & Knowlton.

Response: Please see Response to Request for Production 1 and Reservation of Rights.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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Attorneys for Mohed Altrad and Altrad
Investment Authority SAS

January 5, 2024

CERTIFICATE OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Third-Party Defendant Mohed Altrad's Responses and Objections to Receiver's First Set of Interrogatories and First Set of Requests for Production

Parties Served:

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Attorneys for Plaintiffs

By: /s/ M. Todd Carroll

January 5, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

C/A No. 2023-CP-40-01759

3M COMPANY *et al.*,

Defendants.

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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,

**THIRD-PARTY PLAINTIFF'S
MOTION TO COMPEL
DISCOVERY RESPONSES OF
MOHED ALTRAD AND ALTRAD
INVESTMENT AUTHORITY**

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.;
DE BEERS PLC, individually and as successor
in interest to DE BEERS S.A.; DE BEERS
CENTENARY AG; DE BEERS
CONSOLIDATED MINES LTD., n/k/a DE
BEERS CONSOLIDATED MINES
PROPRIETARY LTD.; DE BEERS UK LTD.;
DE BEERS JEWELLERS LTD.; DE BEERS
JEWELLERS 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
(U.S.A.) JEWELRY INC.; LIGHTBOX
JEWELRY INC.; FOREVERMARK US INC.;
ANGLO AMERICAN CROP NUTRIENTS
(U.S.A.), 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 S.A.S.; SPARROWS OFFSHORE GROUP LTD.; HAWK BIDCO US INC.; ARRANCO US, LLC; SPARROWS OFFSHORE, LLC; THE SPARROWS GROUP, LLC,

Third-Party Defendants.

PLEASE TAKE NOTICE Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC (the “Receiver”), by and through his undersigned counsel, hereby intends to move and will so move the Court within ten days of the filing of this Motion, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling Third-Party Defendants Mohed Altrad and Altrad Investment Authority (jointly, the “Altrad Owners”) to provide responses to discovery as further described herein. The grounds for the Motion are as follows:

1. Receiver’s Third-Party Complaint was filed on June 30, 2023.
2. Receiver served his First Set of Interrogatories and Requests for Production on the Altrad Owners on September 6, 2023 (the “Discovery Requests”), an example copy of which is attached hereto as **Exhibit A**.¹

¹ To ease the burden on both the Clerk of Court and the Court with respect to page volume, Receiver has attached only one of the Discovery Requests served on the Third-Party Defendants that are the subject of this Motion. As referenced herein, the other Discovery Requests served on

3. On January 5, 2024, each of the Altrad Owners served a document entitled “Responses and Objections to Receiver’s First Set of Interrogatories and Requests for Production” (the “Objections”), an example copy of which is attached hereto as **Exhibit B**.² The Objections categorically refuse to provide substantive responses to the Discovery Requests and indicate the Altrad Owners intend not to participate in any discovery in this case during the pendency of their appeals of the Court’s decision not to dissolve the Receivership.³
4. The Altrad Owners’ refusal to participate in discovery during the pendency of their appeals of the dissolution order is frivolous and flatly contrary to law:
 - a. Rule 62(a), SCRCP, provides: “Unless otherwise ordered by the court, an interlocutory . . . judgment . . . in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.”(emphasis added); *see also* S.C. Code §§ 14-3-330(4) and -450 (“In case of an appeal” of an “interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver,” “the proceedings in other respects in the court below

these Third-Party Defendants (*i.e.*, within the same third-party defendant group) are materially the same as the example copy made an exhibit hereto. If the Court prefers to have a full set of the Discovery Responses that are the subject of this Motion, then the Receiver will supplement the record accordingly.

² As noted above, to ease the burden on both the Clerk of Court and the Court with respect to page volume, Receiver has attached only one of the Objections served by the Third-Party Defendants that are the subject of this Motion. The other Objections referenced herein are materially the same as the example copy made an exhibit hereto. If the Court prefers to have a full set of the Objections that are the subject of this Motion, then the Receiver will supplement the record accordingly.

³ The Altrad Owners filed Notices of Appeal on December 18, 2023.

shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.” (emphasis added)).

- b. On September 8, 2023, the Court of Appeals squarely addressed whether appeal of a dissolution order stays the Receiver’s ability to carry out his duties in the case below: The “receivership shall proceed. [The] . . . order is not stayed during pendency of this appeal. Accordingly, the receivership action and the receiver’s ability to carry out his duties are not stayed.” See Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (S.C. Ct. App. Sept. 8, 2023) (emphases added and citations omitted).
5. There is no active order by the Court staying discovery in this matter.
 6. Nor do the Altrad Owners have a motion to stay discovery or a motion for a protective order pending before this Court, as the Objections claim. (**Ex. B**, Objections at 4).
 - a. All motions for protective order and/or stay previously filed by the Altrad Owners were ruled upon by the Court at the October 25, 2023 hearing (10/25/23 Hrg. Tr. pp.174:21-175:23), and the Court’s grant of a stay of discovery expired once the Court issued its dissolution order (*id.*).
 - b. The Receiver confirmed this posture by e-mail on December 8, 2023 to the Altrad Owners, the other Third-Party Defendants, and the Court, indicating the Receiver’s intention to proceed with discovery. By separate communication on December 8, 2023 to the Altrad Owners and the other Third-Party Defendants, the Receiver made clear his expectation “to receive fulsome responses to those requests from you on or before January 5, 2024, with depositions to start soon after.” Copies of

both December 8, 2023 communications from the Receiver are attached hereto as **Exhibit C**.

- c. The Altrad Owners never responded to either of the Receiver's December 8, 2023 communications, other than by serving the Objections almost one month later.
7. Pursuant to Rule 33, SCRCP, "[t]he party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories."
8. Pursuant to Rule 34, SCRCP, "[t]he party upon whom the request is served shall serve a written response within 30 days after the service of the request."
9. Pursuant to Rule 11, SCRCP, counsel for the Receiver attempted to consult with counsel for the Altrad Owners regarding this matter by letter dated January 8, 2024 ("Receiver's Rule 11 Letter"), a copy of which is attached hereto as **Exhibit D**, but received no response prior to the filing of this Motion.
10. Pursuant to Rule 37(a)(4), SCRCP, reasonable expenses may be awarded.

This Motion is supported by the record in this case, the pleadings, and any memorandum of law in support of this motion that may be submitted prior to a hearing on this matter, the law of this state, and any other materials and authorities that may be submitted to the Court.

WHEREFORE, the Receiver respectfully requests an Order compelling the discovery sought together with an award of the attorney's fees and costs as well as any additional relief the Court deems just and proper.

Dated: January 12, 2024
Columbia, South Carolina

GALLIVAN, WHITE & BOYD, P.A.

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Attorneys for Third-Party Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
John A. Tibbs and Margaret B. Tibbs,	)	Civil Action No. 2023-CP-40-01759
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, <i>et al.</i> ,	)	
	)	
Defendants.	)	<u>MOHED ALTRAD AND ALTRAD</u>
	)	<u>INVESTMENT AUTHORITY SAS'S</u>
	)	<u>CROSS-MOTION TO ENJOIN ALL</u>
	)	<u>ACTIVITY BY THE PUTATIVE CAPE</u>
Cape PLC, individually and as successor	)	<u>PLC RECEIVER AND OPPOSITION</u>
in interest to Cape Asbestos Company	)	<u>TO MOTION TO COMPEL</u>
Limited, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Anglo American PLC, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	
	)	

Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS (the “Altrad Defendants”), without waiving their objections to personal jurisdiction in any way, respectfully submit this Cross-Motion to Enjoin All Activity by the Putative Cape PLC Receiver and Memorandum in Opposition to the Receiver’s Motion to Compel, including their objections to the Receiver’s February 9, 2024 Proposed Order submitted to the Court (the “Receiver’s 2/9/24 Proposed Order”).¹

¹ The Altrad Defendants incorporate by reference and adopt the arguments advanced by the other Third-Party-Defendants in opposition to the Receiver’s corresponding motions to compel as to such parties and in regards to the Receiver’s 2/9/24 Proposed Order, including, but not limited to,

The Court cannot proceed with the Receiver's Motions to Compel, nor can it afford the relief sought therein, because of: (1) the South Carolina Court of Appeals' exclusive jurisdiction over the Altrad Defendants' pending appeal of this Court's December 6, 2023 "Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction" (the "December 6 Order on Appeal") and this Court's attendant absence of power and authority to proceed with matters affected by the pending appeal, pursuant to Rule 205, SCACR, and South Carolina jurisprudence applying that Rule; and (2) the pendency of the Altrad Defendants' September 5, 2023 Motion for Protective Order and to Dissolve Receivership (the "Motion for Protective Order").

In pertinent part, with respect to the December 6 Order on Appeal, the issues on appeal include and concern *inter alia* the propriety of the Cape PLC receivership and the granting, continuation, and modification of the appointment of the Receiver. Given these issues, should the December 6 Order on Appeal be reversed as to any of these issues, the result would be the Receiver's third-party action against the Altrad Defendants would be dismissed and/or the Receiver would have no power or authority to take any action on behalf of Cape PLC, including pursuing the relief sought in the Receiver's Third-Party Complaint ("TPC") or engaging in discovery. In this regard, all discovery disputes in this third-party action would necessarily become moot.

Accordingly, the Receiver's third-party claims alleged against the Altrad Defendants and all discovery sought from them are directly affected by the Altrad Defendants' pending appeal. As a result, this Court is deprived of the power to proceed thereon and, likewise, the Receiver is

all arguments (written and oral) and authorities, memoranda, and other materials as may be submitted to the Court.

without power to act. If, and only if, the Altrad Defendants' pending appeal is finally resolved against them and a remittitur is issued from an appellate court, then, and only then, may the Receiver engage in any activity, including pursuing his third-party claims, and only then may this Court proceed to address the Altrad Defendants' pending Motion for Protective Order, the Receiver's Motions to Compel, and/or otherwise address the status and any disagreements as to discovery among these parties. It would be improper for the Court to allow the Receiver to act without authority or to compel the Altrad Defendants to engage in discovery at this time.

RELEVANT PROCEDURAL BACKGROUND

The Receiver's TPC was filed on June 30, 2023. The Receiver subsequently served the Altrad Defendants with interrogatories and requests for production. In response to the TPC, on August 21, 2023, the Altrad Defendants filed the motions seeking to dismiss this case for lack of personal jurisdiction, to dissolve the Cape PLC receivership on a host of grounds, to dismiss the case pursuant to Rules 12(b)(1), 12(b)(6), and 14, and for a protective order regarding discovery. The other Third-Party Defendants filed similar motions.

On October 25, 2023, the Court held a hearing on the personal jurisdiction motions and the motion to dissolve the receivership.² During that hearing, the Court stated it would withhold ruling on the other grounds for dismissal (e.g., as set forth in the Altrad Defendants' Motion to Dismiss).³ In conjunction with that decision, the Court indicated it was not yet prepared to rule on the Motions for Protective Order filed by Altrad Defendants and other of the Third-Party Defendants.

² A copy of a transcript of that hearing is attached as Exhibit A and incorporated herein by reference.

³ The specifics of this decision are more fully set forth below.

Since the October 25th hearing, the Court has issued two orders. First, the Court issued its December 6th order, which is now on appeal,⁴ and which addressed only the Altrad Defendants' personal jurisdiction motions and motions to dissolve the receivership. Then, on December 15, 2023, at the Receiver's request, the Court disposed of the Rule 12(b)(1), 12(b)(6), and 14 motions to dismiss filed by the Altrad Defendants and certain other Third-Party Defendants, without a hearing, in the form of a Form 4 Order stating only:

Motions to Dismiss pursuant to SCRCP, Rule 12(b)(1) and Rule 12(b)(6) filed by ESAB Corporation; Charter Consolidated, Ltd.; Central Mining & Investment Corp., Ltd.; Mohed Altrad and Altrad Investment Authority SAS; Arranco US, LLC, Hawk Bidco US, LLC, and Sparrows Offshore, LLC are DENIED. The Court finds this Court has proper subject matter jurisdiction and the Third-Party Plaintiff's Complaint pleads a valid claim for relief based on the allegations set forth. The Court refers to its Order Denying Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction entered on December 6, 2023.

Form 4 Order.

On December 18, 2023, the Altrad Defendants and other of the Third-Party Defendants⁵ filed a Notice of Appeal with the South Carolina Court of Appeals seeking appellate review of the Court's December 6 Order on Appeal. Thereafter, on January 5, 2024, to reiterate issues on appeal and further reserve and preserve all rights and protections, the Altrad Defendants served initial responses and objections to the Receiver's written discovery.⁶ In these responses, the Altrad

⁴ This December 6 Order on Appeal was verbatim, or substantially similar, to the proposed Order submitted by counsel for the Receiver.

⁵ In addition to the Altrad Defendants, all remaining Third-Party Defendants are appealing the December 6 Order on Appeal.

⁶ The Altrad Defendants' responses and objections are attached as Exhibit B.

Defendants responded in accordance with the arguments set forth herein, namely that: (i) under Rule 205, SCACR, this Court lacks jurisdiction and authority to proceed with this matter, as all issues regarding the purported Receiver's appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals; and (ii) the Altrad Defendants' Motion for Protective Order remains pending. To date, and contrary to the proposed findings in the Receiver's 2/9/24 Proposed Order, the Court has not heard or entered a ruling on the Altrad Defendants' Motion for Protective Order.⁷

ARGUMENT

As set forth above, and as stated in the Altrad Defendants' discovery responses and objections, this Court cannot proceed with the Receiver's Motions to Compel, nor can it afford the relief sought therein, for at least two reasons. *First*, Rule 205, SCACR, **requires, without exception**, that this Court halt and not proceed with matters affected by the Altrad Defendants' pending appeal. *Second*, the continued pendency of their Motion for Protective Order **relieves** the Altrad Defendants from any obligation to respond to the Receiver's challenged discovery.

I. Rule 205, SCACR, deprives this Court of the power and authority to proceed with all matters affected by the appeal.

In its entirety, Rule 205 provides as follows:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

⁷ For the same reason that the pendency of the Altrad Defendants' appeal of this Court's December 6 Order on Appeal prevents this Court from proceeding on the Receiver's Motions to Compel or affording the relief sought therein, given the issues on appeal and the matters affected by such appeal, this Court cannot proceed on the Altrad Defendants' Motion for Protective Order unless and until their pending appeal is finally resolved against them and a remittitur is issued.

As clear by its terms, the action of serving a notice of appeal has two effects. The first is that the appellate court has exclusive jurisdiction over the appeal. The Rule specifically says so, and so has every court that has ever addressed the issue. *See, e.g., Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon the service of the notice of appeal”). The second is that the lower court may proceed in **only** two scenarios, neither of which apply here: the lower court may proceed with (i) petitions for writs of supersedeas under Rule 241, SCACR;⁸ and (ii) “matters **not affected by the appeal.**” Rule 205, SCACR (emphasis added). There are no exceptions to Rule 205. *See id.*

⁸ The required analysis under Rule 241, SCACR, for **stays and supersedeas** petitions is separate and wholly distinct from the **jurisdictional** inquiry mandated by Rule 205, SCACR. A decision on one does not, and cannot, affect or dictate the other. As explained in *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012), these separate rules, with separate accompanying analyses, cannot be conflated:

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. . . .

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. . . .

398 S.C. at 254–55, 728 S.E.2d at 50–51; *see also Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 533–34, 787 S.E.2d 485, 493–94 (2016) (analyzing both Rules 205 and 241, SCACR).

In *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012),⁹ then-Chief Judge Few of the South Carolina Court of Appeals explained this function of Rule 205, SCACR:

Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. . . . Thus, the existence or nonexistence of a stay . . . does not control the [lower] court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a “matter[] affected by the appeal”

398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (citations omitted) (further clarifying that “[t]he reference in Rule 205 to the ‘jurisdiction’ of the lower courts does not refer to subject matter jurisdiction,” but, instead, “govern[s] the circumstances under which the exclusive appellate jurisdiction Rule 205 grants to the appellate court deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *see also Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016) (“[T]he service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal”); *Lancaster v. Ga.-Pac. Corp.*, 403 S.C. 136, 137–38, 742 S.E.2d 867, 868 (2013) (“Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains

⁹ *Tillman* decision has been cited favorably by the South Carolina Supreme Court on two occasions: (1) *Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494 (citing *Tillman* for its analysis of Rule 205, SCACR); and (2) *Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 171, 866 S.E.2d 562, 575 (2021) (citing both *Tillman* and *Stokes-Craven* after stating that “Rule 205, SCACR, explains the effect an appeal has on a lower court’s jurisdiction”). Additionally, *Tillman* was cited favorably by this Court. *See Toal, supra*, at 121, 345–55 (“Note that the existence or nonexistence of a stay under Rule 241 does not control the [lower] court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal” under Rule 205. (citing *Tillman*, 398 S.C. at 254–55, 728 S.E.2d at 50–51)).

jurisdiction until the remittitur is sent to the lower court. . . . [W]e hereby remind the bench and bar that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court.”); *Ditech Fin., LLC v. Snyder*, No. 2019-000575, 2022 WL 2826359, at *9 (S.C. Ct. App. July 20, 2022) (holding that Rule 205, SCACR, divested the lower court of jurisdiction over deciding whether to proceed with a foreclosure because there was a pending appeal of an order that, if reversed, would have had the effect of preventing the foreclosure in the first place); *Rudd v. Pepper Hill Nursing & Rehab Center, LLC*, No. 2019-CP-02-02840, 2021 WL 8153809, at *1 (S.C. Com. Pl. Mar. 16, 2021) (finding that motion to amend complaint to add defendants on veil-piercing theory “involved matters affected by the pending appeal” and could not proceed in the lower court because appealed order denying motion to compel arbitration would result in dismissal of existing defendants and any basis for veil piercing if reversed).

In *In re Estate of Connor v. Slotchiver*, No. 2009-UP-502, 2009 WL 9530097 (S.C. Ct. App. Oct. 29, 2009) (per curiam), the Court of Appeals addressed whether a special administrator of an estate could proceed and take further action in the probate court while the validity of his underlying appointment was on appeal. 2009 WL 9530097, at *2 (interpreting and applying, in pertinent part, Rule 205, SCACR). The Court of Appeals found that because the validity and legitimacy of the appointment was an issue on appeal, the lower court erred by refusing to dismiss the special administrator’s petition to sell real estate and by finding that such petition was unaffected by the appeal. *Id.* In so finding, the Court of Appeals explained that the special administrator’s “authority to pursue a petition to sell estate assets derived from and depended entirely upon his position as special administrator of [the] estate.” *Id.*

Here, on December 18, 2023, the Altrad Defendants filed their Notice of Appeal as to the December 6 Order on Appeal. From that moment, Rule 205, SCACR, automatically applied and continues to apply while the appeal remains pending. As noted in *Tillman*, the question now posed by Rule 205 is “whether the issue sought to be litigated in the lower court during the appeal is a ‘matter[] affected by the appeal.’” 398 S.C. at 255, 728 S.E.2d at 51; *see also Gattis v. Murrells Inlet VFW No. 10420*, 353 S.C. 100, 112, 576 S.E.2d 191, 197 (Ct. App. 2003) (“Circuit courts generally lose . . . jurisdiction of a case when a notice of appeal is filed and served.”).

As stated above, the December 6 Order on Appeal ruled, *inter alia*, on the propriety and empowerment of the Cape PLC receivership and granted, continued, and modified the appointment of the Receiver. Accordingly, given the Altrad Defendants’ appeal, the foregoing are issues on appeal.

The issues of whether the Receivership is proper, whether the Receiver has been duly empowered, and whether the December 6th order has wrongly granted, continued, and modified his appointment directly affect the Receiver’s ability to appear in this Court, serve pleadings, pursue his derivative claims, file motions, seek discovery from the Altrad Defendants, and take any action on behalf of Cape PLC and/or other entity with relation or affiliation to the Altrad Defendants. *See, e.g., Estate of Connor*, 2009 WL 9530097, at *2 (finding that special administrator’s authority to take action “derived from and depended entirely upon his position” and, because an appeal as to the validity and legitimacy of the underlying appointment was pending, additional action taken in the probate court would be affected by the appeal). As such, the Receiver’s Motion to Compel, filed in furtherance of discovery requests served by the Receiver, unavoidably implicates each of these issues on appeal.

Should the December 6th order be reversed on appeal as to any of these issues, the result would be that the Receiver’s third-party action against the Altrad Defendants would be dismissed and/or the Receiver would have no power or authority to prosecute any claims or take any other action on behalf of Cape PLC, including pursuing the relief sought in the TPC or engaging in discovery. In light of these facts and the circumstances presented, Rule 205, SCACR, leaves no room for disagreement and provides no exception—this Court cannot proceed with or rule on the Receiver’s Motion to Compel (or the Altrad Defendants’ Motion for Protective Order filed prior thereto, for that matter) during the pendency of the appeal. *See, e.g., Arnal v. Fraser*, 371 S.C. 512, 517–23, 641 S.E.2d 419, 421–24 (2007) (conducting matter-by-matter analysis of lower court rulings; voiding *ab initio*, “for lack of jurisdiction,” those rulings that were affected by the matter on appeal; and noting that, per Rule 205, “the lower court may not act or issue orders that affect an issue on appeal”); *see also Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) (“We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal.”); *Wingate v. Wingate*, 289 S.C. 574, 575, 347 S.E.2d 878, 878 (1985) (holding that a family court’s order reducing alimony payments “is void” because “alimony was an issue on appeal from the divorce decree” and “this Court had exclusive jurisdiction over the alimony issue”); *Wilson v. Walker*, 340 S.C. 531, 540, 532 S.E.2d 19, 23 (Ct. App. 2000) (vacating a contempt order “for lack of jurisdiction” because the trial court issued it while an earlier order on which the contempt order was based was on appeal).¹⁰

¹⁰ The Receiver attempts to characterize the Altrad Defendants’ “refusal to participate in discovery” as being “frivolous and flatly contrary to law.” Receiver’s Mots. to Compel. In an effort to support such unfounded pronouncements, without addressing the dispositive points herein, the Receiver cites: (i) inapplicable authorities (i.e., Rule 62, SCRCP, and S.C. Code Ann. § 14-3-450) so as to improperly conflate Rule 205 (governing **jurisdiction**) with Rule 241 (governing **stays and supersedeas**); and (ii) a non-precedential, interlocutory procedural order—in a matter that is separately captioned and wholly unrelated to this third-party action (Sept. 8,

As a result of this jurisdictional bar, this Court cannot proceed with the Receiver's Motions to Compel, nor can it afford the relief sought therein, unless and until the Altrad Defendants' pending appeal is finally resolved and a remittitur is issued.

II. The Altrad Defendants' Motion for Protective Order remains pending.

In his motions to compel and in the Receiver's 2/9/24 Proposed Order, the Receiver asserts that, during the October 25th hearing, the Court orally "ruled on the motions for stay/protective order by granting a stay of discovery to expire once the Court issued its order ruling on the dissolution motion." *See* Receiver's Mots. to Compel (citing Oct. 25 Hrg. Tr. at 174:21–175:23). He then adds that all remaining motions to dismiss were denied in the Court's Form 4 Order.

However, this incomplete chronology fails to note the Court never ruled on the Altrad Defendants' Motion for Protective Order, the timely filing and service of which relieved the Altrad Defendants from any obligation to respond to the Receiver's challenged discovery. *See, e.g., Baughman v. AT&T Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991) (noting that a motion for protective order operates to prevent the discovery from being had; otherwise, requiring responses during the pendency of such a motion "would negate the utility of such a motion" (quotation omitted)); *Richardson on Behalf of 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100*

2023 Order from Appellate Case No. 2023-000727)—that likewise focuses **only** on the Rule 241, SCACR, **stay** analysis. Similarly, to the extent the Receiver points to the subsequent November 21, 2023 non-precedential, interlocutory procedural order—in the same Appellate Case No. 2023-000727 that is separately captioned and wholly unrelated to this third-party action—such order lends the Receiver no substantive support by its pronouncement that the court "will take no action on any order **which is not properly before it.**" (Emphasis added). To the contrary, there is no appellate precedent or pronouncement—binding or otherwise—that permits this Receiver to engage in litigation or conduct any activities at all (including attempting to proceed with discovery) when Rule 205, SCACR, bars further action by and divests this Court of jurisdiction over all matters affected by the Altrad Defendants' pending appeal—including the creation of the receivership itself.

Dollars (\$21,000.00) U.S. Currency & Various Jewelry, 430 S.C. 594, 598, 846 S.E.2d 14, 16 (Ct. App. 2020) (“A party served with written discovery has a duty to answer it, *unless the party objects based on a stated reason or moves for a protective order.*” (emphasis added and citations omitted)).

The Receiver cannot cite to a prior, entered Order of this Court denying the Altrad Defendants’ Motion for Protective Order because one does not exist. And now, as explained above, because Rule 205, SCACR, categorically bars any further action in this Court on matters that are affected by the Altrad Defendants’ pending appeal, the Court cannot proceed with and must withhold ruling on the Motion for Protective Order (in addition to the Receiver’s Motions to Compel) until final resolution of the appeal.

Determination of how the Court treated the protective orders during the October 25th hearing is important, because neither the December 6th order nor the December 15th Form 4 ruling make any mention of the Altrad Defendants’ Motion for Protective Order (nor that of any other Third-Party Defendant). During the October 25th hearing, after a number of hours on motions to dissolve the receivership and motions to dismiss for lack of personal jurisdiction, the following *limited* exchanges—almost entirely between the Court and counsel for the Receiver—occurred regarding protective orders:

The Court: First of all, I do not see where we really explored the motion for protective orders. So I don’t invite a whole bunch of argument this in time in the evening. But, Mr. Lay, tell me about your motions for protective orders.

Mr. Lay: Well, Your Honor, they – they moved for protective order to make sure these motions have been heard, essentially. And if they’ve now been heard, there’s some defendants where there’s not a pleading issue. Clearly, enough has been pled, and its time to move forward on discovery.

To the extent that there are defendants that – where you’re concerned there may be additional allegations made in the complaint, and we’re able to do that, we can amend the complaint

and add those and not move forward on discovery on those defendants that – where you think there should be some additional allegations made.

The Court: All Right. Well, here's what I'm going to do.

Mr. Lay: You – yes, ma'am.

The Court: All right.

Mr. Lay: I figured you'd tell us.

The Court: Okay. With regard to the motion to dissolve, I'm not going to dissolve the receivership. I'm sure that comes at no surprise. And I would put with Mr. Lay the responsibility for developing an order that denies the motions to dissolve.

And I think I made enough by way of queries and questions for y'all to understand it. My history about this thing is such that at this moment I will not attempt to dissolve this receivership.

Oct. 25 Hrg. Tr. at 172:5–173:18.

The Court then continued discussing the procedure for preparation of a proposed order on dissolution of the receivership before returning to a discussion of discovery, stating:

The Court: Now let me jump for a moment to the motion for protective order. I am going to stay any discovery until we deal with the motions to dismiss and motions for entry of default. And really, I think it's a motion to dismiss, I think, we need to enter more into and deal with at this moment more than anything else, because that's the one I'm the most up in the air about.

Oct. 25 Hrg. Tr. at 174:21–175:4. The final mention of any protective order occurred shortly after:

The Court: Good. All right. If the parties feel in the interim that I need to do something by way of a protective order, I will consider that. But I say here now that I am – that I want to pause any further discovery in this matter now. And I can file a short order to that effect.

But I say from the bench now as an order of the Court that I am pausing discovery – further discovery in this matter until we resolve the issue of who ought to be in this matter, if anybody. And that's going to depend on how this order is drawn

Oct. 25 Hr'g Tr. at 178:9–23.

Through these limited exchanges with counsel for the Receiver, two things regarding discovery were decided. First, discovery was stayed pending resolution of the parties' respective motions to dismiss. And, second, that while discovery was paused, the Court was not entertaining arguments on the motions for protective order due to the lack of time at that proceeding. At no time since the October 25th hearing did the Court notice and hear and entertain arguments on the Altrad Defendants' Motion for Protective Order (or that of any other Third-Party Defendant) or rule thereon.

Even assuming *arguendo* that the above limited exchanges with counsel for the Receiver constituted an oral ruling denying the Altrad Defendants' Motion for Protective Order (which it does not), South Carolina law is clear that oral rulings are not final or valid until “written and entered by the clerk of court.” *Bowman v. Richland Mem’l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) (citation omitted); *see also Ford v. State Ethics Comm’n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (“The written order is the trial judge’s final order and as such constitutes the final judgment of the court.”). This is because “[u]ntil an order is written and entered by the clerk of court, the judge retains discretion to change his [or her] mind and amend his [or her] ruling accordingly.” *Bowman*, 335 S.C. at 91, 515 S.E.2d 260 (citation omitted). Until it is in writing, it cannot be binding on the parties. *Bayne v. Bass*, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990).

As is evident here, the reasoning for this rule is “only after the order is filed with the clerk of court are the parties given notice of the order and provided with an opportunity to comply with the order.” *Bowman*, 335 S.C. at 92, 515 S.E.2d at 261. Because the Court here issued only an oral and temporary ruling staying discovery, and never ruled on the Altrad Defendants' Motion for

Protective Order, the Altrad Defendants have not been provided notice of the final order nor an opportunity to comply with such an order.¹¹

The record here is clear. No oral ruling on the Altrad Defendants' Motion for Protective Order was issued at the October 25th hearing. Thereafter, neither the December 6th order (drafted by the Receiver) nor the subsequent Form 4 Order addresses any motion for protective order, likely, due to the fact the Court indicated, during the October 25th hearing, that it was reserving the matter for a later date. However, as discussed above, because of the pendency of the Altrad Defendants' appeal, the Court cannot now proceed with the Motion for Protective Order due to the Rule 205, SCACR, divestiture and deprivation of this Court's jurisdiction to hear and rule on such matters affected by this appeal. *See generally Doe v. S.C. Dep't of Soc. Servs.*, 407 S.C. 623, 632, 757 S.E.2d 712, 716 (2014) (noting lower court continued pending hearing pursuant to Rule 205, SCACR, due to filing of notice of appeal).

As a result, the Court cannot now grant the Receiver's 2/9/24 Proposed Order or otherwise issue a written order on the Altrad Defendants' as-of-yet unaddressed Motion for Protective Order. And, because their request for a protective order is still pending, any ruling on the Receiver's Motions to Compel—while inappropriate and not permitted under Rule 205, SCACR, in the first instance—would nonetheless be premature in the face of the pending Motion for Protective Order.

CROSS-MOTION TO ENJOIN

Although the application of Rule 205, SCACR (as detailed above) is automatic and does not require an order by any Court to be effective, the Receiver's insistence upon prosecuting this litigation—including, but not limited to, (i) requesting orders addressing the Altrad Defendants'

¹¹ This same rationale applies with even more force as to the February 2nd hearing and any applicable oral rulings of the Court, as the Altrad Defendants' Motion for Protective Order was not noticed for hearing.

Motion for Protective Order (and those of other Third-Party Defendants) that were filed *prior to* the pending appeal, (ii) attempting to conduct discovery *after* the filing of the appeal, filing Motions to Compel *after* the filing of the appeal, and requesting a ruling on its Motions to Compel that were filed *after* the appeal—has made it necessary for the Altrad Defendants to bring this Cross-Motion at this time. As the Receiver filed the Motions to Compel *after* the service of the Notice of Appeal, this Court should affirm that it lacks jurisdiction and the power to act on such matters by not ruling on the Motions to Compel or the Altrad Defendants’ unaddressed Motion for Protective Order. However, if the Court determines that it should enter any order in this case, it should issue an order enjoining the Receiver.

The Receiver’s conduct in this case is in disregard of the undeniable point that Rule 205, SCACR, deprives the circuit court of jurisdiction and the power to proceed when an appeal is pending. Because of the Receiver’s attempts to create administrative chaos by seeking rulings from the circuit court on issues that are already on appeal, the Altrad Defendants have no choice but to seek injunctive relief from this Court to enforce Rule 205. Accordingly, the Altrad Defendants respectfully request the Court put a stop to all of the Receiver’s activities—both in litigation, and outside of litigation—unless or until the appellate process is fully and finally adjudicated. Through this Cross-Motion (and the entirety of this filing), the Altrad Defendants are simply and respectfully requesting the Court to enforce South Carolina’s Appellate Court Rules. Based on the foregoing, the co-extensive grounds set forth in the Altrad Defendants’ Argument I, above, and the additional bases set forth hereinafter, no legitimate reason exists in this matter to disregard the precepts and import of Rule 205, SCACR:

1. A jurisdictional prohibition renders a court without power to act. *See Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (“Without jurisdiction, a court cannot

proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.” (quoting 32A Am. Jur. 2d *Federal Courts* § 581 (2007))).

2. The Receiver purports to be “the officer of the Court” or “the arm of the Court.” *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). Because the Court unambiguously lacks jurisdiction to proceed, the Receiver himself also lacks any authority to conduct any activity, as he cannot possibly have any greater authority to function than the circuit court itself.

Accordingly, the Court should refrain from ruling on the Receiver’s Motions to Compel or any other outstanding motions. However, if any order is to be issued, the Court should issue an order enjoining the Receiver from undertaking any further activities unless and until the appellate courts issue a remittitur regarding the issues on appeal, including *inter alia* the propriety of the receivership appointment in the first place, due to a lack of jurisdiction.

Until such a remittitur is properly issued at the conclusion of an appeal, the Court should clarify by issuing an injunction that the Receiver lacks any authority to “proceed at all,” whether with respect to purportedly filing new complaints or pleadings (on his behalf or putatively on behalf of Cape PLC, an active foreign company), conducting discovery from the litigants, conducting discovery from third parties, negotiating with asbestos plaintiffs, or anything else. *Limehouse*, 404 S.C. at 104, 744 S.E.2d at 572; *see also Wise v. S.C. Dep’t of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (dismissing motions filed with the Supreme Court after the issuance of a remittitur because “[w]hen the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard [in the appellate court] thereafter”).

Respectfully, the injunction sought here is not discretionary; it is sought as a matter of law based on the circuit court's lack of jurisdiction and power to proceed and the black-letter South Carolina law enforcing that lack of jurisdiction. *See* Rule 205, SCACR (providing that "[u]pon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal," and allowing the circuit court to proceed only "with matters not affected by the appeal"); *see also, e.g., Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 122–44, 857 S.E.2d 4, 5–16 (2021) (evaluating, in both majority and dissenting opinions, the propriety of a requested injunction that was based strictly on an order from a Bankruptcy Court).

A court honoring its own jurisdictional limitations holds a cherished place in the law and, indeed, is a backbone of the constitutional order. *See, e.g., Marbury v. Madison*, 5 U.S. 137, 173–80 (1803) (acknowledging the constitutional limits of the Supreme Court's jurisdiction and refusing to issue a mandamus to which the petitioner was otherwise entitled due to the lack of original jurisdiction). The Altrad Defendants respectfully submit that the Court should do so here and enjoin the Receiver from undertaking any activities unless and until a remittitur is issued.

CONCLUSION

Because Rule 205 of the South Carolina Appellate Court Rules prevents this Court from proceeding with matters affected by an appeal, the facts and circumstances attendant to the Altrad Defendants' notice of appeal, the December 6th order that is presently on appeal, and underlying issues now on appeal halt this Court's ability to act on the Receiver's current Motions to Compel *and* the Altrad Defendants' unaddressed Motion for Protective Order. That same rule also bars the Receiver from engaging in any activity at all unless and until a remittitur is issued at the conclusion of the appeal.

Accordingly, the Altrad Defendants respectfully request that this Court refuse to hear and defer ruling on the Receiver's Motions to Compel unless and until the Altrad Defendants' appeal is finally determined and, as thereafter may be necessary, their Motion for Protective Order decided. However, if the Court determines that it should enter any order in this case, it should issue an order enjoining the Receiver, as set forth herein, because of his lack of authority to act. The Altrad Defendants pray for all such other and further relief to which they may be entitled in accordance with the precepts of Rule 205, SCACR, and other applicable law.

Respectfully submitted,

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February 16, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS and MARGARET B. TIBBS,	)	
	)	Civil Action No. 2023-CP-40-01759
Plaintiffs,	)	
	)	In Re:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	<u>MOHED ALTRAD AND ALTRAD</u>
	)	<u>INVESTMENT AUTHORITY SAS'S</u>
CAPE PLC, individually and as successor in	)	<u>OBJECTION TO COURT RULING ON</u>
interest to CAPE ASBESTOS COMPANY	)	<u>MOTIONS FOR PROTECTIVE ORDER</u>
LIMITED, by and through its duly appointed	)	<u>OR RECEIVER'S MOTIONS TO</u>
Receiver Peter D. Protopapas,	)	<u>COMPEL</u>
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	
	)	

Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS (the “Altrad Defendants”), without waiving their objections to personal jurisdiction in any way, respectfully submit this objection to the Receiver’s requests that the Court rule on any outstanding motions¹

¹ These outstanding motions now include: (i) the Altrad Defendants’ Motion for Protective Order and to Dissolve Receivership, filed September 20, 2023 (the “Altrad Motion for Protective Order”); (ii) the Receiver’s Motion to Compel Discovery Responses of the Altrad Defendants, filed January 12, 2024 (the “Motion to Compel Altrad”); and (iii) the Altrad Defendants’ Cross-Motion to Enjoin All Activity by Receiver, filed February 16, 2024 (the “Altrad Cross-Motion for Injunction”).

and the Court's stated intention of doing so as to some, but not all, of such motions² following a hearing held on February 2, 2024³ (the "Objection").⁴

PRELIMINARY STATEMENT

For the reasons explained below, the Court cannot consider, dispose of, or enter an order on the Altrad Motion for Protective Order—which remains pending—or the Receiver's Motion to Compel Altrad because it lacks jurisdiction and the power to do so, pursuant to Rule 205, SCACR, as a result of the pending appeal of this Court's December 6, 2023 "Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction" (the "December 6 Order on Appeal").

In pertinent part, with respect to the December 6 Order on Appeal, the issues on appeal include and concern the propriety of the Cape PLC receivership; the granting, continuation, and modification of the appointment of the Receiver; *and* whether this Court has personal jurisdiction

² By email dated February 21, 2024, in response to an email exchange among the parties, the Court noted that it would rule on the briefs with regard to the Third-Party Defendants' motions for protective order and the Receiver's motions to compel, inclusive of the Altrad Motion for Protective Order and the Motion to Compel Altrad, and ordered that all parties submit proposed orders by February 27, 2024. A copy of the relevant email exchange and the Court's February 21, 2024 response is attached as **Exhibit A**. In conjunction with other of the Third-Party Defendants, the Altrad Defendants are contemporaneously herewith submitting a Proposed Order for the Court's consideration, which is incorporated herein by reference.

³ In an email dated February 20, 2024 (included as part of **Exhibit A**), the Receiver referenced proceedings occurring on February 2, 2024 (the "Feb. 2 Hearing") and requested that the Court make certain rulings based on the parties' briefing. The Altrad Defendants note and renew their objections to both (i) what transpired during the Feb. 2 Hearing, at which not all remaining Third-Party Defendants were represented and no motion of or affecting the Altrad Defendants was noticed, and (ii) the request that the Court rule on the outstanding motions without a hearing.

⁴ The Altrad Defendants further incorporate by reference and adopt: (i) their Cross-Motion to Enjoin All Activity by the Putative Cape PLC Receiver and, as inextricably linked thereto and combined therewith, their Opposition to the Receiver's Motion to Compel Altrad, filed February 16, 2024 (the "Altrad Cross-Motion & Opposition"); and (ii) the filings, objections, and arguments advanced by the other Third-Party-Defendants regarding the pendency of motions for protective order, opposing the Receiver's corresponding motions to compel, and seeking injunctive relief, including, but not limited to, all arguments (written and oral) and authorities, memoranda, and other materials as may be submitted to the Court.

over the Altrad Defendants or other of the Third-Party Defendants.⁵ Should the December 6 Order on Appeal be reversed as to *any* of these issues, the result would be the Receiver's third-party action against the Altrad Defendants would be dismissed and/or the Receiver would have no power or authority to take any action on behalf of Cape PLC, including pursuing the relief sought in the Receiver's Third-Party Complaint ("TPC") or engaging in discovery. In this regard, all discovery disputes in this third-party action would necessarily become moot.

Accordingly, the Receiver's third-party claims alleged against the Altrad Defendants and all discovery sought from them are directly affected by the Altrad Defendants' pending appeal. As a result, this Court is deprived of the power to proceed thereon. If, and only if, the Altrad Defendants' pending appeal is finally resolved against them, then, and only then, may the Receiver pursue his third-party claims and this Court may proceed to address the pending Altrad Motion for Protective Order, the Receiver's Motion to Compel Altrad, and/or otherwise address the status and any disagreements as to discovery among these parties. It would be improper for the Court to compel the Altrad Defendants to engage in discovery at this time.

However, if the Court intends on making any ruling, it should first rule upon the Third-Party Defendants' motions for injunctive relief, including the Altrad Cross-Motion for Injunction.

RELEVANT PROCEDURAL BACKGROUND

The Receiver's TPC was filed on June 30, 2023. The Receiver subsequently served the Altrad Defendants with interrogatories and requests for production. In response to the TPC, on August 21, 2023 and thereafter, the Altrad Defendants filed the motions seeking to dismiss this case for lack of personal jurisdiction, to dissolve the Cape PLC receivership on a host of grounds,

⁵ The Altrad Defendants and other appealing Third-Party Defendants (collectively, the "Appellants") filed initial appellate briefs on February 22, 2024. All of the initial briefing filed by the Appellants is hereby incorporated by reference.

to dismiss the case pursuant to Rules 12(b)(1), 12(b)(6), and 14, and for a protective order regarding discovery. The other Third-Party Defendants filed similar motions.

On October 25, 2023, the Court held a hearing on the personal jurisdiction motions and the motion to dissolve the receivership.⁶ During that hearing, the Court stated it would withhold ruling on the other grounds for dismissal (e.g., as set forth in the Altrad Defendants' Motion to Dismiss).⁷ In conjunction with that decision, the Court indicated it was not yet prepared to rule on the Motions for Protective Order filed by Altrad Defendants and other of the Third-Party Defendants.

Since the October 25th hearing, the Court has issued two orders. First, the Court issued its December 6th order, which is now on appeal,⁸ and which addressed only the Altrad Defendants' personal jurisdiction motions and motions to dissolve the receivership. Then, on December 15, 2023, at the Receiver's request, the Court disposed of the Rule 12(b)(1), 12(b)(6), and 14 motions to dismiss filed by the Altrad Defendants and certain other Third-Party Defendants, without a hearing, in the form of a Form 4 Order stating only:

Motions to Dismiss pursuant to SCRCP, Rule 12(b)(1) and Rule 12(b)(6) filed by ESAB Corporation; Charter Consolidated, Ltd.; Central Mining & Investment Corp., Ltd.; Mohed Altrad and Altrad Investment Authority SAS; Arranco US, LLC, Hawk Bidco US, LLC, and Sparrows Offshore, LLC are DENIED. The Court finds this Court has proper subject matter jurisdiction and the Third-Party Plaintiff's Complaint pleads a valid claim for relief based on the allegations set forth. The Court refers to its Order Denying Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction entered on December 6, 2023.

Form 4 Order.

⁶ A copy of a transcript of that hearing is attached to the Altrad Cross-Motion & Opposition as "Exhibit A" and is incorporated herein by reference.

⁷ The specifics of this decision are more fully set forth below.

⁸ This December 6 Order on Appeal was verbatim, or substantially similar, to the 74-page Proposed Order submitted by counsel for the Receiver.

On December 18, 2023, the Altrad Defendants and other of the Third-Party Defendants⁹ filed a Notice of Appeal with the South Carolina Court of Appeals seeking appellate review of the Court's December 6 Order on Appeal. Thereafter, on January 5, 2024, to reiterate issues on appeal and further reserve and preserve all rights and protections, the Altrad Defendants served initial responses and objections to the Receiver's written discovery.¹⁰ In these responses, the Altrad Defendants responded in accordance with the arguments set forth herein, namely that: (i) under Rule 205, SCACR, this Court lacks jurisdiction and authority to proceed with this matter, as all issues regarding the purported Receiver's appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals; and (ii) the Altrad Motion for Protective Order remains pending. To date, the Court has not heard or entered a ruling on the Altrad Defendants' Motion for Protective Order.¹¹

ARGUMENT

As set forth above, this Court cannot proceed with the Receiver's Motion to Compel Altrad, nor can it afford the relief sought therein, for at least two reasons.

First, Rule 205 of the South Carolina Appellate Court Rules **requires, without exception**, that this Court halt and not proceed with matters affected by the pending appeal, including whether the Receiver has authority to act—in any manner, including engaging in litigation and all aspects

⁹ In addition to the Altrad Defendants, all remaining Third-Party Defendants are appealing the December 6 Order on Appeal.

¹⁰ The Altrad Defendants' responses and objections are collectively attached to the Altrad Cross-Motion & Opposition as "Exhibit B" and are incorporated herein by reference.

¹¹ For the same reason that the pendency of the Altrad Defendants' appeal of this Court's December 6 Order on Appeal prevents this Court from proceeding on the Receiver's Motions to Compel or affording the relief sought therein, given the issues on appeal and the matters affected by such appeal, this Court cannot proceed on the pending motions for protective order unless and until the pending appeal is finally resolved against the Altrad Defendants and the other Appellants and a remittitur is issued.

thereof—and whether this Court has personal jurisdiction over the Altrad Defendants and the other Appellants.

Second, the continued pendency of their Altrad Motion for Protective Order **relieves** them from any obligation to respond to the Receiver’s challenged discovery. By operation of Rule 205, SCACR, this relief continues throughout the duration of the pending appeal.

I. RULE 205, SCACR, DEPRIVES THIS COURT OF THE POWER AND AUTHORITY TO PROCEED WITH ALL MATTERS AFFECTED BY THE APPEAL.

A. Rule 205, SCACR, Generally

Rule 205 reads, in its entirety:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR.

As clear by its terms, the action of serving a notice of appeal brings about two (2) effects. The first is that the appellate court has exclusive jurisdiction over the appeal. *See id.*; *see also Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon the service of the notice of appeal”). The second is that the lower court may proceed in **only** two (2) scenarios, neither of which apply here; the lower court may proceed with (i) petitions for writs of supersedeas under Rule 241, SCACR,¹² and (ii) “matters

¹² The required analysis under Rule 241, SCACR, for **stays and supersedeas** petitions is separate and wholly distinct from the **jurisdictional** inquiry mandated by Rule 205, SCACR. A decision on one does not, and cannot, affect or dictate the other. As explained in *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012), these separate rules, with separate accompanying analyses, cannot be conflated:

not affected by the appeal.” Rule 205, SCACR (emphasis added). There are no exceptions to Rule 205. *See id.*

In *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012),¹³ then-Chief Judge Few of the South Carolina Court of Appeals explained this function of Rule 205, SCACR:

Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. . . . Thus, the existence or nonexistence of a stay . . . does not control the [lower] court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a “matter[] affected by the appeal”

398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (citations omitted) (further clarifying that “[t]he reference in Rule 205 to the ‘jurisdiction’ of the lower courts does not refer to subject matter jurisdiction,” but, instead, “govern[s] the circumstances under which the exclusive appellate jurisdiction Rule 205 grants to the appellate court deprives the lower court of the power to address

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. . . .

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. . . .

398 S.C. at 254–55, 728 S.E.2d at 50–51; *see also Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 533–34, 787 S.E.2d 485, 493–94 (2016) (analyzing both Rules 205 and 241, SCACR).

¹³ This 2012 *Tillman* decision has been cited favorably by the South Carolina Supreme Court on two occasions: (1) *Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494 (citing *Tillman* for its analysis of Rule 205, SCACR) and (2) *Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 171, 866 S.E.2d 562, 575 (2021) (citing both *Tillman* and *Stokes-Craven* after stating that “Rule 205, SCACR, explains the effect an appeal has on a lower court’s jurisdiction”). Additionally, *Tillman* was cited favorably by this Court. *See Toal, supra*, at 121, 345–55 (“Note that the existence or nonexistence of a stay under Rule 241 does not control the [lower] court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal” under Rule 205. (citing *Tillman*, 398 S.C. at 254–55, 728 S.E.2d at 50–51)).

a particular issue, or ‘matter,’ during the pendency of the appeal”); *see also Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016) (“[T]he service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal”); *Lancaster v. Ga.-Pac. Corp.*, 403 S.C. 136, 137–38, 742 S.E.2d 867, 868 (2013) (“Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court. . . . [W]e hereby remind the bench and bar that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court.”); *Ditech Fin., LLC v. Snyder*, No. 2019-000575, 2022 WL 2826359, at *9 (S.C. Ct. App. July 20, 2022) (holding that Rule 205, SCACR, divested the lower court of jurisdiction over deciding whether to proceed with a foreclosure because there was a pending appeal of an order that, if reversed, would have had the effect of preventing the foreclosure in the first place); *Rudd v. Pepper Hill Nursing & Rehab Center, LLC*, No. 2019-CP-02-02840, 2021 WL 8153809, at *1 (S.C. Com. Pl. Mar. 16, 2021) (finding that motion to amend complaint to add defendants on veil-piercing theory “involved matters affected by the pending appeal” and could not proceed in the lower court because appealed order denying motion to compel arbitration would result in dismissal of existing defendants and any basis for veil piercing if reversed).

In *In re Estate of Connor v. Slotchiver*, No. 2009-UP-502, 2009 WL 9530097 (S.C. Ct. App. Oct. 29, 2009) (per curiam), the South Carolina Court of Appeals addressed whether a special administrator of an estate could proceed and take further action in the probate court while the validity of his underlying appointment was on appeal. 2009 WL 9530097, at *2 (interpreting and applying, in pertinent part, Rule 205, SCACR). There, the Court of Appeals found that because

the validity and legitimacy of the appointment was an issue on appeal, the lower court erred by refusing to dismiss the special administrator's petition to sell real estate and by finding that such petition was unaffected by the appeal. *Id.* In so finding, the Court of Appeals explained that the special administrator's "authority to pursue a petition to sell estate assets derived from and depended entirely upon his position as special administrator of [the] estate." *Id.*

Here, on December 18, 2023, the Altrad Defendants filed their Notice of Appeal as to the December 6 Order on Appeal. From that moment, Rule 205, SCACR, automatically applied and continues to apply while the Altrad Defendants' appeal remains pending. *See* Rule 205, SCACR. As noted in *Tillman*, the question now posed by Rule 205 is "whether the issue sought to be litigated in the lower court during the appeal is a 'matter[] affected by the appeal.'" *Tillman*, 398 S.C. at 255, 728 S.E.2d at 51; *see also, cf. Gattis v. Murrells Inlet VFW No. 10420*, 353 S.C. 100, 112, 576 S.E.2d 191, 197 (Ct. App. 2003) ("Circuit courts generally lose . . . jurisdiction of a case when a notice of appeal is filed and served.").

B. Issues on Appeal & Matters Affected Thereby

(1) *Issues of Propriety, Appointment, Modification, and Continuation of Cape PLC Receivership & Grant of New Appointment*

As stated above and as more fully articulated in the Altrad Defendants' initial brief filed with the South Carolina Court of Appeals on February 22, 2024 (the "Altrad Initial Brief"), the December 6 Order on Appeal ruled, *inter alia*, on the propriety and empowerment of the Cape PLC receivership and granted, continued, and modified the appointment of the Receiver. Accordingly, given the Altrad Defendants' appeal, the foregoing are issues on appeal.

Accordingly, the issues of whether the Receivership is proper, whether the Receiver has been duly empowered, and whether the December 6 Order on Appeal has granted, continued, and/or modified his appointment (collectively, the "Receivership Issues on Appeal") directly affect

the Receiver's ability to appear in this Court, serve pleadings, pursue his derivative claims, file motions, seek discovery from the Altrad Defendants, and take any action on behalf of Cape PLC and/or other entity with relation or affiliation to the Altrad Defendants. *See, e.g., Estate of Connor*, 2009 WL 9530097, at *2 (finding that special administrator's authority to take action "derived from and depended entirely upon his position" and, because an appeal as to the validity and legitimacy of the underlying appointment was pending, additional action taken in the probate court would be affected by the appeal). As such, the Receiver's Motion to Compel Altrad, filed in furtherance of discovery requests served by the Receiver, implicates each of these Receivership Issues on Appeal.

(2) *Issues of Personal Jurisdiction*

Similarly, as stated above and as more fully articulated in the Altrad Initial Brief, whether the Court has personal jurisdiction over either of the Altrad Defendants are issues inextricably linked with the Receivership Issues, were ruled on in this Court's same December 6 Order on Appeal, and, therefore, are also issues on appeal (the "Personal Jurisdiction Issues on Appeal"). For the same reasons, the result is the same: these Personal Jurisdiction Issues on Appeal directly affect the Receiver's ability to pursue his derivative claims (if proper in the first place) and take any action against the Altrad Defendants.

(3) *Mattes Affected by Receivership & Personal Jurisdiction Issues*

Should the December 6 Order on Appeal be reversed on appeal as to any of the Receivership Issues on Appeal or the Personal Jurisdiction Issues on Appeal (collectively, the "Issues on Appeal"), the result would be that the Receiver's third-party action against the Altrad Defendants would be dismissed and/or the Receiver would have no power or authority to prosecute any claims against the Altrad Defendants or take any other action on behalf of Cape PLC, including pursuing the relief sought in the TPC or engaging in discovery. That is, the Altrad Defendants'

pending appeal “necessarily” affects all aspects of the Receiver’s underlying claims against them, including discovery.

In light of these facts and the circumstances presented, Rule 205, SCACR, leaves no room for disagreement and provides no exception—this Court cannot proceed with or rule on the Receiver’s motions to compel (or the pending motions for protective order filed prior thereto) during the pendency of the appeal. *See, e.g., Arnal v. Fraser*, 371 S.C. 512, 517–23, 641 S.E.2d 419, 421–24 (2007) (conducting matter-by-matter analysis of lower court rulings; voiding *ab initio*, “for lack of jurisdiction,” those rulings that were affected by the matter on appeal; and noting that, per Rule 205, “the lower court may not act or issue orders that affect an issue on appeal”); *see also Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) (“We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal.”); *Wingate v. Wingate*, 289 S.C. 574, 575, 347 S.E.2d 878, 878 (1985) (holding that a family court’s order reducing alimony payments “is void” because “alimony was an issue on appeal from the divorce decree” and “this Court had exclusive jurisdiction over the alimony issue”); *Wilson v. Walker*, 340 S.C. 531, 540, 532 S.E.2d 19, 23 (Ct. App. 2000) (vacating a contempt order “for lack of jurisdiction” because the trial court issued it while an earlier order on which the contempt order was based was on appeal).

As a result of this self-executing jurisdictional bar, this Court cannot proceed with the Receiver’s motions to compel (including the Motion to Compel Altrad), nor can it afford the relief sought therein, unless and until the pending appeal is finally resolved.

C. Inapplicable & Unavailing Arguments & Authorities Relied on by Receiver

In an effort to support his position and in an attempt to characterize the Altrad Defendants’ “refusal to participate in discovery” as being “frivolous and flatly contrary to law,” without addressing the dispositive points herein, the Receiver cites:

(i) inapplicable authorities like S.C. Code Ann. § 14-3-450 and Rule 62, SCRCP, which improperly conflate Rule 205 (governing **jurisdiction**) with Rule 241 (governing **stays and supersedeas**)¹⁴; and

(ii) non-precedential, interlocutory procedural orders—in the “Payne & Keller” matter that is separately captioned and wholly unrelated to this third-party action (Sept. 8, 2023 & Nov. 21, 2023 Orders from Appellate Case No. 2023-000727)—that likewise focus only on the inapplicable Rule 241, SCACR, stay analysis and authorities or make clear that, instead of providing a merits ruling on the issue at hand, the court would “take no action on any order **which is not properly before it.**” (Emphasis added).

The foregoing authorities are inapplicable and unavailing and cannot properly be used to circumvent Rule 205, SCACR. To the contrary, there is no applicable authority or appellate precedent or pronouncement—binding or otherwise—that permits this Receiver to proceed with discovery and seek resolution of discovery motions when Rule 205, SCACR, bars further action by depriving and divesting this Court with jurisdiction over all matters affected by the Altrad Defendants’ pending appeal.

II. THE ALTRAD DEFENDANTS’ MOTION FOR PROTECTIVE ORDER REMAINS PENDING.

In his Motions to Compel and as previously argued to the Court (including at the Feb. 2 Hearing), the Receiver asserts that, during the October 25 Hearing, the Court orally “ruled on the

¹⁴ In addition to being wholly inapplicable and irrelevant to a Rule 205, SCACR, jurisdiction analysis, both S.C. Code Ann. § 14-3-450 and Rule 62, SCRCP, by their express terms, do not apply, under any analysis, to the Personal Jurisdiction Issues on Appeal. *See, e.g.,* S.C. Code Ann. §§ 14-3-330, -450 (limiting application—in the realm of stays under inapplicable Rule 241, SCACR—to “an appeal under item (4) of Section 14-3-330” of “[a]n interlocutory order . . . granting, continuing, modifying, or refusing the appointment of a receiver”); Rule 62, SCRCP (entitled “Automatic Stay; Exceptions—Injunctions, Receivership, and Accountings” and providing an exception for “an interlocutory or final judgment . . . in a receivership action,” which does not apply to the December 6 Order on Appeal and is relevant only to the inapplicable Rule 241, SCACR, stay analysis).

motions for stay/protective order by granting a stay of discovery to expire once the Court issued its order ruling on the dissolution motion.” *See* Receiver’s Mots. to Compel (citing Oct. 25 Hrg. Tr. at 174:21–175:23). He then adds that all remaining motions to dismiss were denied in the Court’s Form 4 Order. *See* Receiver’s Mots. to Compel. However, this incomplete chronology fails to note the Court never ruled on the Altrad Motion for Protective Order, the timely filing and service of which relieved the Altrad Defendants from any obligation to respond to the Receiver’s challenged discovery (inclusive of the Receiver’s Written Discovery and the Initial 30(b)(6) Notices, as amended). *See, e.g., Baughman v. AT&T Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991) (noting that a motion for protective order operates to prevent the discovery from being had; otherwise, requiring responses during the pendency of such a motion “would negate the utility of such a motion” (quotation omitted)); *Richardson on Behalf of 15th Cir. Drug Enf’t Unit v. Twenty-One Thousand & no/100 Dollars (\$21,000.00) U.S. Currency & Various Jewelry*, 430 S.C. 594, 598, 846 S.E.2d 14, 16 (Ct. App. 2020) (“A party served with written discovery has a duty to answer it, *unless the party objects based on a stated reason or moves for a protective order.*” (emphasis added) (citations omitted)). The Receiver cannot cite to a prior, entered Order of this Court denying the Altrad Motion for Protective Order, because one does not exist in the record of this case. And now, as explained above, because Rule 205, SCACR, categorically bars any further action affected by the Altrad Defendants’ pending appeal, the Court cannot proceed with and must withhold ruling on pending discovery motions (inclusive of the Altrad Motion for Protective Order and the Receiver’s Motion to Compel Altrad) until final resolution of the appeal.

Determination of how the Court treated the protective orders during the October 25 Hearing is important, because neither the December 6 Order on Appeal nor the December 15 Form 4 Order make any mention of the Altrad Motion for Protective Order (nor that of any other Third-Party

Defendant). During the October 25 Hearing, after a number of hours on motions to dissolve the receivership and motions to dismiss for lack of personal jurisdiction, the following *limited* exchanges—almost entirely between the Court and counsel for the Receiver—occurred regarding protective orders:

The Court: First of all, I do not see where we really explored the motion for protective orders. So I don't invite a whole bunch of argument this in time in the evening. But, Mr. Lay, tell me about your motions for protective orders.

Mr. Lay: Well, Your Honor, they – they moved for protective order to make sure these motions have been heard, essentially. And if they've now been heard, there's some defendants where there's not a pleading issue. Clearly, enough has been pled, and its time to move forward on discovery.

To the extent that there are defendants that – where you're concerned there may be additional allegations made in the complaint, and we're able to do that, we can amend the complaint and add those and not move forward on discovery on those defendants that – where you think there should be some additional allegations made.

The Court: All Right. Well, here's what I'm going to do.

Mr. Lay: You – yes, ma'am.

The Court: All right.

Mr. Lay: I figured you'd tell us.

The Court: Okay. With regard to the motion to dissolve, I'm not going to dissolve the receivership. I'm sure that comes at no surprise. And I would put with Mr. Lay the responsibility for developing an order that denies the motions to dissolve.

And I think I made enough by way of queries and questions for y'all to understand it. My history about this thing is such that at this moment I will not attempt to dissolve this receivership.

Oct. 25 Hrg. Tr. at 172:5–173:18.

The Court then continued discussing the procedure for preparation of a proposed order on dissolution of the receivership before returning to a discussion of discovery, stating:

The Court: Now let me jump for a moment to the motion for protective order. I am going to stay any discovery until we deal with the motions to dismiss and motions for entry of default. And really, I think it's a motion to dismiss, I think, we need to enter more into and deal with at this moment more than anything else, because that's the one I'm the most up in the air about.

Oct. 25 Hrg. Tr. at 174:21–175:4. The final mention of any protective order occurred shortly after:

The Court: Good. All right. If the parties feel in the interim that I need to do something by way of a protective order, I will consider that. But I say here now that I am – that I want to pause any further discovery in this matter now. And I can file a short order to that effect.

But I say from the bench now as an order of the Court that I am pausing discovery – further discovery in this matter until we resolve the issue of who ought to be in this matter, if anybody. And that's going to depend on how this order is drawn

Oct. 25 Hrg. Tr. at 178:9–23.

Through these limited exchanges with counsel for the Receiver, two things regarding discovery were decided. First, discovery was stayed pending resolution of the parties' respective motions to dismiss. And, second, that while discovery was paused, the Court was not entertaining arguments on the motions for protective order due to the lack of time at that proceeding. At no time since the October 25 Hearing did the Court properly notice and hear and entertain arguments on the Altrad Motion for Protective Order (or that of any other Third-Party Defendant) or rule thereon.

Even assuming *arguendo* that the above limited exchanges with counsel for the Receiver constituted an oral ruling denying the Altrad Motion for Protective Order (which it does not), South Carolina law is clear that oral rulings are not final or valid until “written and entered by the clerk

of court.” *Bowman v. Richland Mem’l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) (citation omitted); *see also Ford v. State Ethics Comm’n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (“The *written order* is the trial judge’s final order and as such constitutes the final judgment of the court.” (emphasis added)). This is because “[u]ntil an order is written and entered by the clerk of court, the judge retains discretion to change his [or her] mind and amend his [or her] ruling accordingly.” *Bowman*, 335 S.C. at 91, 515 S.E.2d 260 (citation omitted). Until it is in writing, it cannot be binding on the parties. *Bayne v. Bass*, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990).

As is evident here, the reasoning for this rule is “only after the order is filed with the clerk of court are the parties given notice of the order and provided with an opportunity to comply with the order.” *Bowman*, 335 S.C. at 92, 515 S.E.2d at 261. Because the Court here issued only an oral and temporary ruling staying discovery, and never ruled on the Altrad Motion for Protective Order, the Altrad Defendants have not been provided notice of any final order nor an opportunity to comply with such an order.¹⁵

The record here is clear. No oral ruling on the Altrad Motion for Protective Order was issued at the October 25 Hearing. Thereafter, neither the December 6 Order on Appeal (drafted by the Receiver) nor the December 15 Form 4 Order addresses such Altrad Motion for Protective Order, likely, due to the fact the Court indicated, during the October 25 Hearing, that it was reserving the matter for a later date. However, as discussed above, because of the pendency of the Altrad Defendants’ appeal, and the underlying Issues on Appeal, the Court cannot now proceed with any pending motion for protective order due to the Rule 205, SCACR, divestiture and deprivation of this Court’s power to hear and rule on such matters affected by this appeal. *See*

¹⁵ This same rationale applies with even more force as to the Feb. 2 Hearing and any applicable oral rulings of the Court, as the Altrad Motion for Protective Order was not noticed for hearing.

generally Doe v. S.C. Dep't of Soc. Servs., 407 S.C. 623, 632, 757 S.E.2d 712, 716 (2014) (noting lower court continued pending hearing pursuant to Rule 205, SCACR, due to filing of notice of appeal).

As a result, the Court cannot now issue a written order on the as-of-yet unaddressed Altrad Motion for Protective Order. And, because their request for a protective order is still pending, any ruling on the Receiver's Motion to Compel Altrad—while inappropriate and not permitted under Rule 205, SCACR, in the first instance—would nonetheless be premature in the face of the pending Motion for Protective Order.

III. A DENIAL OF THE ALTRAD MOTION FOR PROTECTIVE ORDER OR GRANT OF THE RECEIVER'S MOTION TO COMPEL ALTRAD EQUATES TO A DENIAL OF THE ALTRAD CROSS-MOTION FOR INJUNCTION.

The Court should refrain from ruling on any outstanding motions. However, if any order is to be issued or ruling is going to be made, the Court should (i) first consider the pending Altrad Cross-Motion for Injunction—inextricably linked with and to the issues underlying the pending motions for protective order and to compel discovery—and (ii) issue an order enjoining the Receiver from undertaking any further activities unless and until the appellate courts issue a remittitur regarding all Issues on Appeal.¹⁶ Until such a remittitur is properly issued at the conclusion of an appeal, the Court should clarify by issuing the injunction that the Receiver—as an "officer" and "arm" of the Court—lacks any authority to "proceed at all," whether with respect

¹⁶ The injunction sought here is not discretionary; it is sought as a matter of law based on the circuit court's lack of jurisdiction and power to proceed and the black-letter South Carolina law enforcing that lack of jurisdiction. *See* Rule 205, SCACR (providing that "[u]pon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal," and allowing the circuit court to proceed only "with matters not affected by the appeal"); *see also, e.g., Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 122–44, 857 S.E.2d 4, 5–16 (2021) (evaluating, in both majority and dissenting opinions, the propriety of a requested injunction that was based strictly on an order from a Bankruptcy Court). A court honoring its own jurisdictional limitations holds a cherished place in the law and, indeed, is a backbone of the constitutional order. *See, e.g., Marbury v. Madison*, 5 U.S. 137, 173–80 (1803) (acknowledging the constitutional limits of the Supreme Court's jurisdiction and refusing to issue a mandamus to which the petitioner was otherwise entitled due to the lack of original jurisdiction).

to purportedly marshalling assets, conducting discovery from the litigants, conducting discovery from third parties, negotiating with asbestos plaintiffs, or anything else. *See, e.g., Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (“Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.” (quoting 32A Am. Jur. 2d *Federal Courts* § 581 (2007))); *Wise v. S.C. Dep’t of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (dismissing motions filed with the Supreme Court after the issuance of a remittitur because “[w]hen the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard [in the appellate court] thereafter”).

The Altrad Defendants have requested that the Court—if it is inclined to take any action—enjoin the Receiver from undertaking any activities unless and until a remittitur is issued, including the pursuit of discovery. Accordingly, any ruling allowing discovery would equate to a denial of the requested injunction and the Altrad Defendants’ underlying motion seeking such relief.

CONCLUSION

Because Rule 205 of the South Carolina Appellate Court Rules prevents this Court from proceeding with matters affected by an appeal, the facts and circumstances attendant to the Altrad Defendant’s Notice of Appeal, the December 6 Order on Appeal, and the underlying Issues on Appeal halt this Court’s ability to act on all pending discovery motions. That same rule also bars the Receiver from engaging in any activity at all unless and until a remittitur is issued at the conclusion of the appeal.

Accordingly, the Altrad Defendants respectfully request that this Court refuse to hear and defer ruling on the Receiver’s Motion to Compel Altrad unless and until the Altrad Defendants’ appeal is finally determined and, as thereafter may be necessary, the Altrad Motion for Protective

Order is decided. However, as sought in the Altrad Cross-Motion for Injunction, if the Court determines that it should enter any order in this case, it should issue an order enjoining the Receiver because of his lack of authority to act. Any ruling of the Court on pending discovery motions without also ruling on the Altrad Cross-Motion for Injunction inextricably linked thereto would equate to a denial of the injunctive relief sought. The Altrad Defendants pray for all such other and further relief to which they may be entitled in accordance with the precepts of Rule 205, SCACR, and other applicable law.

Respectfully submitted,

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February 27, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,

v.
3M COMPANY *et al.*,

Defendants.

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,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.;
DE BEERS PLC, individually and as successor
in interest to DE BEERS S.A.; DE BEERS
CENTENARY AG; DE BEERS
CONSOLIDATED MINES LTD., n/k/a DE
BEERS CONSOLIDATED MINES
PROPRIETARY LTD.; DE BEERS UK LTD.;
DE BEERS JEWELLERS LTD.; DE BEERS
JEWELLERS 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
(U.S.A.) JEWELRY INC.; LIGHTBOX
JEWELRY INC.; FOREVERMARK US INC.;
ANGLO AMERICAN CROP NUTRIENTS
(U.S.A.), LLC; CHARTER CONSOLIDATED
LTD.; ESAB CORPORATION; CENTRAL
MINING & INVESTMENT CORPORATION
LTD.; CAPE HOLDCO LTD.; THE LAW
DEBENTURE CORPORATION PLC; CAPE
INDUSTRIAL SERVICES GROUP LTD.;

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2023-CP-40-01759

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

**ORDER GRANTING THE RECEIVER'S
MOTIONS TO COMPEL DISCOVERY
RESPONSES OF THIRD-PARTY
DEFENDANTS AND 30(B)(6)
DEPOSITIONS OF ARRANCO US, LLC
AND CENTRAL MINING &
INVESTMENT CORPORATION LTD.**

MOHED ALTRAD; ALTRAD UK LTD.; CAPE UK HOLDINGS NEWCO LTD.; ALTRAD SERVICES LTD., f/k/a CAPE INDUSTRIAL SERVICES LTD.; ALTRAD INVESTMENT AUTHORITY S.A.S.; SPARROWS OFFSHORE GROUP LTD.; HAWK BIDCO US INC.; ARRANCO US, LLC; SPARROWS OFFSHORE, LLC; THE SPARROWS GROUP, LLC,

Third-Party Defendants.

This matter came before the Court on the following six Motions to Compel filed on January 12, 2024 by Third-Party Plaintiff Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (“Cape”), by and through its duly appointed Receiver Peter D. Protopapas (the “Receiver”):

1. Motion to Compel Discovery Responses of Anglo American PLC, De Beers PLC, De Beers UK Ltd., De Beers Centenary AG, and De Beers Consolidated Mines Proprietary Ltd. (together, “Oppenheimer Third-Party Defendants”);
2. Motion to Compel Discovery Responses of Mohed Altrad and Altrad Investment Authority S.A.S. (together, “Altrad Owners Third-Party Defendants”);
3. Motion to Compel Discovery Responses of Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (together, “Altrad Sparrows Third-Party Defendants”);
4. Motion to Compel Discovery Responses of Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation (together, “Charter Third-Party Defendants”);
5. Motion to Compel 30(b)(6) Deposition of Central Mining & Investment Corporation Ltd. (“Central Mining”); and
6. Motion to Compel 30(b)(6) Deposition of Arranco US, LLC (“Arranco”)

(together, the “Motions to Compel”). On February 16, 2024, the Third-Party Defendants filed materials opposing the Motions to Compel.¹ Accordingly, the Motions to Compel have been fully briefed and are ready for decision.

Discussion

The Third-Party Defendants argue the Court cannot entertain or grant the relief sought by the Motions to Compel for multiple reasons: (1) the South Carolina Court of Appeals possesses exclusive jurisdiction over this entire action following the Third-Party Defendants’ December 18, 2023 appeals of one of the Court’s orders, which they claim prevents both the Court and the Receiver from taking any additional action, including engaging in discovery or ruling on discovery motions, during the pendency of those appeals; (2) discovery cannot proceed during the “pendency” of Third-Party Defendants’ motions for protective order and/or to stay discovery (collectively, the “Protective Order Motions”), motions which were filed prior to any appeals in this case and prior to the Court’s October 25, 2023 hearing, during which the Court effectively granted the primary relief sought by those motions; and (3) the Court now cannot rule on those “pending” Protective Order Motions because it cannot act while the appeals are pending.

As outlined below, the Court finds that the procedural history of this case and recent orders issued by the Court of Appeals in similar circumstances undermine the arguments presented by Third-Party Defendants, and the Court will grant the Motions to Compel.

¹ The Court notes that although Third-Party Defendants included in these February 16 filings what they have termed to be “cross-motions” for “injunctive relief,” the Court advised the parties by email on February 21, 2024, that those requests for injunctive relief will remain under the Court’s advisement to be addressed at another time.

A. Procedural History.

1. *The Receiver's Third-Party Complaint (June 2023).*

On June 30, 2023, the Receiver filed a Third-Party Complaint against numerous third-party defendants alleged to have facilitated, caused, or directed Cape's U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians. In doing so, the Receiver categorized the Third-Party Defendants into three groups: the Altrad Third-Party Defendants (Third-Party Compl. ¶ 119); the Oppenheimer Third-Party Defendants (*id.* ¶ 122); and the Charter Third-Party Defendants (*id.* ¶ 124).² Following appearances by the Altrad Third-Party Defendants, the Receiver sub-divided that category into two groups: the Altrad Owners Third-Party Defendants (Mohed Altrad and Altrad Investment Authority) and the Altrad Sparrows Third-Party Defendants (Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC).

2. *The Receiver's Discovery Requests and Deposition Notices (July-September 2023).*

Beginning July 20, 2023, the Receiver served First Sets of Interrogatories and Requests for Production on each of the Third-Party Defendants ("Discovery Requests").³ In addition, the

² Since filing this third-party action, the Receiver has voluntarily dismissed without prejudice 12 Third-Party Defendants; default judgments have been entered against 7 others, including based on intentional failures to respond; and the remaining 13 Third-Party Defendants have been found subject to the proper exercise of personal jurisdiction by this Court.

³ The materials before the Court indicate the Receiver served his Discovery Requests on the following dates:

- As to the Oppenheimer Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on: (1) Anglo American PLC, De Beers PLC, and De Beers UK Ltd. on August 15, 2023; (2) De Beers Consolidated Mines Proprietary Ltd. on September 26, 2023; and (3) De Beers Centenary AG on December 19, 2023.

Receiver noticed depositions of various Third-Party Defendants pursuant to Rule 30(b)(6), SCRCF, including serving Arranco on August 30, 2023 and Central Mining on September 6, 2023, with both depositions scheduled for October 2023.

The Receiver has indicated that following those notices and in light of the Court's late-October 2023 hearing on the Receiver's motions for default judgment, as well as on the Third-Party Defendants' Protective Order Motions, motions to dissolve the Receivership, and motions to dismiss, the Receiver voluntarily postponed those depositions to allow the Court to resolve the pending motions.

3. Third-Party Defendants' Protective Order Motions (Filed Prior to the October 25, 2023 Hearing and Included on the Agenda for Oral Argument).

Third-Party Defendants filed various iterations of the Protective Order Motions—in stand-alone motions and combined with or embedded within other motions—all of which were included on the Court's agenda for oral argument at the October 25, 2023 hearing. In September and October 2023, the Oppenheimer Third-Party Defendants (five of the six⁴) filed the only stand-alone Protective Order Motions:

-
- As to the Charter Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on ESAB Corporation on July 20, 2023, and on Central Mining and Charter Consolidated Ltd. on September 6, 2023.
 - As to the Altrad Sparrows Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on July 20, 2023.
 - As to the Altrad Owners Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on September 6, 2023.

⁴ The Oppenheimer Defendants explain that De Beers Centenary AG did not file a motion for protective order because the Receiver's Discovery Requests were not served on De Beers Centenary AG until December 19, 2023.

- On September 15, 2023, three of the Oppenheimer Defendants (Anglo American PLC, De Beers PLC, and De Beers UK Ltd.) filed a Motion for Stay of Discovery and Protective Order.
- On October 13, 2023, De Beers Consolidated Mines Proprietary Ltd. filed a Motion for Stay of Discovery and Protective Order.

These motions sought “a stay of discovery pending resolution of the motions to dissolve the receivership filed by other Third-Party Defendants and any appeals stemming therefrom.” In footnote 2 of those motions, the Oppenheimer Third-Party Defendants argued as follows:

The Court of Appeals’ one-paragraph order in a separate case confirms the appealability of a denial of a motion to dissolve a receivership **and that a stay during such an appeal is not automatic.** See *Childers v. Davis Mechanical Contractors, Inc., et al.*, No. 2023-000727, at *3 (S.C. Ct. App. Sept. 8, 2023). Here, De Beers plc is asking the Court to exercise its discretion to stay discovery while it considers the validity of the purported Receiver’s authority to pursue such discovery and whether this Court has personal jurisdiction over the target of such discovery.

(emphasis added).

The remaining Third-Party Defendants filed their Protective Order Motions as requests combined with or embedded within other motions:

The Charter Defendants: (1) filed on September 1, 2023, motions to dismiss that informally requested an order staying discovery pending resolution of that motion to dismiss; and (2) filed on October 6, 2023, combined motions to dissolve the Receivership and for protective order, the latter of which sought an order the Charter Defendants have “no obligation to respond to the Discovery Requests or to the 30(b)(6) Notice” until the motions to dissolve are “fully resolved.”

The Altrad Owners: (1) filed on September 1, 2023, combined motions to dismiss and to stay discovery; and (2) filed on September 20, 2023, combined motions to dissolve the Receivership and for protective order for discovery and depositions.

The Altrad Sparrows: (1) filed on August 21, 2023 combined motions to dismiss and to stay discovery; and (2) filed on September 5, 2023, combined motions to dissolve the Receivership and for protective order for discovery and depositions.

4. Order Granting, in part, Protective Order Motions (October 25, 2023).

On October 25, 2023, the Court held a hearing on the pending motions to dissolve the receivership, motions to dismiss, and Protective Order Motions. At the hearing, the Court ruled on the Protective Order Motions by granting a discovery stay “until we deal with the motions to dismiss and motions for entry of default.” (10/25/23 Hrg. Tr. pp. 174:21–175:23 (emphasis added)). The Court later said it would file “a short order to that effect” if the “parties feel in the interim that I need to do something by way of a protective order” but made it clear “I say from the bench now as an order of the Court that I am pausing discovery –further discovery in this matter until we resolve the issue of who ought to be in this matter, if anybody.” (*Id.* at p. 178:9–21).

Following that ruling from the bench giving Third-Party Defendants the primary relief sought in their Protective Order Motions, and following the Court’s invitation to enter a written order “to that effect” upon request of any party, no party requested a written order as to the Protective Order Motions.

5. The Dissolution Order and the Default Order (December 6, 2023).

Thereafter, after receiving proposed orders from both the Receiver and Third-Party Defendants, the Court entered two written orders on December 6, 2023. The Court denied all of the Third-Party Defendants’ motions to dissolve the Receivership and to dismiss for lack of personal jurisdiction (the “Dissolution Order”), and the Court granted seven motions for entry of default and entered default as to Altrad Services Ltd, Altrad UK Ltd, Cape Holdco Ltd, Cape

Industrial Services Group Ltd, Cape UK Holdings Newco Ltd, The Sparrows Group LLC, and Sparrows Offshore Group Ltd (the “Default Order”).

6. *The Receiver’s Communication Confirming What Motions Remained Pending (December 8, 2023).*

On December 8, 2023, following entry of the Court’s Dissolution Order and the Default Order, the Receiver communicated with the Court and all Third-Party Defendants to confirm (1) the Court had ruled on all Protective Order Motions; (2) discovery could proceed; and (3) the only motions remaining for disposition by the Court were additional motions to dismiss on grounds other than personal jurisdiction:

From: [John T. Lay](#)
To: [JToal@sccourts.org](#); [Diaz, Eva](#)
Cc: [Carroll, Todd](#); [Vic Rawl](#); [James Elliott](#); [mary.rose.alexander@lw.com](#); [Steve Pugh](#); [O’Neill, Elizabeth](#); [john.pierce@lw.com](#); [Cameron Berthelsen](#); [caitlin.dahl@lw.com](#); [michele.johnson@lw.com](#); [Ben Carlton](#); [Hall, Kevin](#); [Brian Barnwell](#); [Gray Culbreath](#); [Lindsay Joyner](#); [Jon Robinson](#); [Shannon Peake](#); [murrell@smithrobinsonlaw.com](#); [Troy Brown](#); [Dana Becker](#); [Brady Edwards](#); [Robert Jacques](#); [Lindsay Valek](#); [Brian Barnwell](#); [Paul A. Scudato](#); [Lori Seaborn](#); [Charity McQueen](#); 6982_67 John A. Tibbs and Margaret B. Tibbs v. Schneider Electric USA, Inc. et al Email: 6982_67
Subject: Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Outstanding Motions for Ruling By the Court [IMAN-IMANMAIN.FID1077725]
Date: Friday, December 8, 2023 11:22:43 AM

Chief Justice Toal and Ms. Diaz,

Given the Court’s December 6, 2023 Order denying the Third-Party Defendants’ motions to dismiss for lack of personal jurisdiction and motions to dissolve the Receivership, and given the Court’s ruling during the October 25, 2023 hearing on all motions for protective order/to stay discovery, which stayed discovery only while the Court considered its ruling on the above-referenced motions (10/25/23 Hrg. Tr. Pp.174:21-175:23), it is the Receiver’s understanding: (1) discovery can now proceed; and (2) the only motions remaining for disposition by the Court are those six motions to dismiss filed by certain Third-Party Defendants pursuant to Rule 12(b)(6) (ESAB Corporation; Charter Consolidated, Ltd.; Central Mining & Investment Corp., Ltd.; Mohed Altrad and Altrad Investment Authority SAS; Arranco US, LLC, Hawk Bidco US, LLC, and Sparrows Offshore, LLC; and De Beers Jewellers, Ltd.).

As those six remaining motions have been fully briefed by both sides, counsel for the Receiver requests the Court rule on these remaining motions as briefed and without additional oral argument.

Should the Court need additional information from us, please do not hesitate to let me know.
 Thank you in advance for your consideration,

John T.

None of the Third-Party Defendants responded to the Receiver’s December 8 communication or otherwise indicated to the Court that Third-Party Defendants believed their Protective Order Motions remained pending.

7. *The Court's Order Denying the Remaining Motions to Dismiss (December 15, 2023).*

Having received no response from Third-Party Defendants disputing the Receiver's December 8 characterization of what motions remained for decision by the Court, the Court denied, by Form 4 Order entered on December 15, 2023, all other motions to dismiss (the "Order on Remaining Motions to Dismiss"). On that same day, the Receiver served Amended Notices of Deposition pursuant to Rule 30(b)(6), SCRCP on Arranco and Central Mining for depositions to begin on January 10 and 12, 2024, respectively.

8. *Third-Party Defendants' Notices of Appeal (December 18, 2023).*

Beginning December 18, 2023, Third-Party Defendants filed notices of appeal with respect to the Court's Dissolution Order and filed the next day in this Court notices of filing notices of appeal. Third-Party Defendants raised to this Court no other objections or concerns at that time about engaging in discovery during the pendency of those appeals.

9. *Additional Motions to Dismiss Filed by Oppenheimer Defendants (December 21, 2023).*

The Oppenheimer Defendants, who previously acknowledged in their Protective Order Motions "that a stay during such an appeal [of a denial of a motion to dissolve a receivership] is not automatic," invoked the Court's jurisdiction on December 21, 2023—just three days after filing their notices of appeal—by filing additional motions to dismiss echoing the grounds of the motions to dismiss that were denied by the Court one week earlier in the "Order on Remaining Motions to Dismiss."⁵

10. *Communications Between Third-Party Defendants and the Receiver Regarding Discovery Requests and Scheduled Depositions (January 2024).*

⁵ On February 2, 2024, the Court heard oral argument on the Oppenheimer's December 21, 2023 motions to dismiss, and on February 23, 2024, the Court entered an order denying these motions.

On January 5, 2024, the extended deadline set by the Receiver for Third-Party Defendants to respond to the outstanding discovery requests, each set of Third-Party Defendants served Objections to the Discovery Requests refusing to provide substantive responses and indicating their intention not to participate in any discovery in this case during the pendency of their appeals of the Dissolution Order.

By letter dated January 8, 2024, pursuant to Rule 11, SCRCP (“Rule 11 Letter”), counsel for the Receiver attempted to consult with all counsel for the Third-Party Defendants regarding the deficient responses they served late on January 5 (a Friday), as well as their anticipated failure to participate in the two depositions noticed the next week, and the Receiver advised the Third-Party Defendants he intended to proceed with the depositions of Arranco on January 10 and Central Mining on January 12.

The Receiver has indicated that the only direct responses to the Rule 11 Letter he received came from Arranco (stating on January 9, in response to the Receiver’s circulation of a “zoom” link for the deposition set to begin the following day, that it refused to designate or produce any witness); Central Mining (stating on January 10 that it would not produce any deposition witness); and the Oppenheimer Third-Party Defendants (contending on January 12 that the appeal precluded progress in this matter).

B. Current Status and Recent Court of Appeals Orders.

As the procedural history makes clear, there is no active stay of discovery in this proceeding, nor do Third-Party Defendants have any pending Protective Order Motions that require resolution by the Court. At the October 25, 2023 hearing, the Court verbally granted all Third-Party Defendants’ Protective Order Motions for a limited duration and with a self-executing

termination upon the Court's resolution of the remaining pending motions.⁶ The Court invited the parties to request a written order memorializing that bench ruling if a written order was desired, but no party accepted that invitation.

To the extent any Third-Party Defendant claims that it believed the Protective Order Motions remained pending following the October 25 hearing, that claim was waived when Third-Party Defendants failed (1) to correct the Receiver's December 8 communication to the Court confirming the Protective Order Motions were ruled on at the October 25 hearing; or (2) otherwise advise the Court it believed some, all, or even part of the Protective Order Motions were still pending. Instead, Third-Party Defendants said nothing, allowing the Court to enter its December 15 Order intended to dispose of all remaining motions filed before, and on the agenda for, the October 25, 2023 hearing. Third-Party Defendants cannot use their appeals as a shield to defend this lack of response, as those appeals were not filed until December 18.

Nor have Third-Party Defendants sought a separate stay from either this Court or the Court of Appeals. Although the Oppenheimer Defendants recognized in their Protective Order Motions that the appeal of a receivership dissolution order did not automatically stay the case below, they never requested a stay from this Court following their December 18 notices of appeal. Instead, the Oppenheimer Defendants filed new motions to dismiss after noticing the appeal, requesting that the Court act on their behalf. For the Oppenheimer Defendants to now suggest that this Court's

⁶ Third-Party Defendants apparently take the position their Protective Order Motions remained pending because some of them requested a continued stay of all discovery throughout any hypothetical appeal of any order the Court might issue should such an appeal be filed at some point in the future. There were no appeals pending at the time the Court ruled on the Protective Order Motions, and any ruling addressing this hypothetical ground would have been inappropriately advisory. No additional Protective Order Motions have been filed by Third-Party Defendants following their appeals, nor have they filed any other motions following their appeals requesting such a stay.

ability to act was automatically stayed upon the filing of their Notice of Appeal is entirely inconsistent with their prior arguments and actions.

The Court of Appeals has already addressed—and rejected—Third-Party Defendants’ argument that discovery in this case is automatically stayed following the appeal of an order denying a motion to dissolve a receivership; indeed, the Court of Appeals expressly found that the appeal of a dissolution order does **not** stay the Receiver’s ability to carry out his duties in the case below. *See* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (S.C. Ct. App. Sept. 8, 2023) (ruling that the “receivership shall proceed” and the “order is not stayed during pendency of this appeal,” such that “the receivership action and the receiver’s ability to carry out his duties are not stayed”); *see also* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (S.C. Ct. App. Nov. 23, 2023).

Once the Court resolved all pending motions to dismiss and the default-judgment motions, which it did by December 15, 2024, there was no further need for a stay: Discovery was to continue. In multiple communications to the Third-Party Defendants, the Receiver communicated that understanding as well as his proper expectation the Third-Party Defendants would provide “fulsome responses to [discovery] requests . . . on or before January 5, 2024, with depositions to start soon after.” No Third-Party Defendant contested that understanding or otherwise indicated they believed Protective Order Motions were outstanding; indeed, no Third-Party Defendant responded at all.

Although the Third-Party Defendants could have addressed (in a timely manner) any concerns about engaging in discovery immediately following the filing of their December 18 notices of appeal, no such objections were raised. Rather, the Third-Party Defendants waited until January 5—*i.e.*, the day that proper discovery responses were due, and less than a week before the

re-noticed depositions were set to begin—to assert they were taking the position they had no obligation to participate in the case during the pendency of their appeals. Simply put, there is no sound legal basis for the Third-Party Defendants’ assertion that discovery in this proceeding has been stayed, and the Court **GRANTS** each of the Receiver’s Motions to Compel.

* * * * *

For the reasons set forth herein, the Court **GRANTS** the Receiver’s Motions to Compel and **ORDERS** Third-Party Defendants (i) to provide responsive, substantive, and complete answers to the Receiver’s Discovery Requests within 14 days of entry of this Order and (ii) to begin producing documents in response to the Receivers’ Requests for Production the same day. The Court also **ORDERS** Arranco and Central Mining to designate witnesses for the Rule 30(b)(6) depositions noticed by Receiver within 7 days of entry of this Order and produce those witnesses within 21 days of entry of this Order.

IT IS SO ORDERED

SIGNED this _____ day of _____, 2024

HON. JEAN H. TOAL, CHIEF JUSTICE (Ret.)

[JUDGE’S E-SIGNATURE FOLLOWS]



Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Compel

So Ordered

Jean H. Toal

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