

**RECEIVED**

**Sep 18 2024**

**S.C. SUPREME COURT**

# **EXHIBIT A**

# The South Carolina Court of Appeals

Michael David Link and Sandra Strickland Link,  
Plaintiffs,

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum Environment & Energy, Inc., Armstrong International, Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel Corporation, The Bonitz Company, Brenntag North America, Inc., Brenntag Specialties, LLC, Carboline Company, Carrier Corporation, Celanese Corporation, CNA Holdings, LLC, Cooper Crouse-Hinds, LLC, Covil Corporation, Daniel International Corporation, Davis Mechanical Contractors, Inc., Eaton Corporation, Ellington Insulation Company, Inc., Emerson Electric Co., Ericsson Inc., Fisher Controls International, LLC, Flowserve Corporation, Flowserve US, Inc., Fluor Constructors International, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Cable Corporation, General Cable Industries, Inc., General Electric Company, Gould Electronics, Inc., Goulds Pumps, Incorporated, Graybar Electric Company, Inc., Great Barrier Insulation Co., Grinnell, LLC, Heat & Frost Insulation Company, Inc., Henry Pratt Company, LLC, Howden North America, Inc., ITT, LLC, J & L Insulation, Inc., K-Mac Services, Inc., Kohler Co., Metropolitan Life Insurance Company, Michelin Corporation, Michelin North America, Inc., Milliken & Company, Occidental Chemical Corporation, The Okonite Company, Inc., Paramount Global, PECW Holding Company, Plastics Engineering Company, Presnell Insulation Co., Inc., Prysmian Cables and Systems USA, LLC, Raytheon Technologies Corporation, Redco Corporation, Riley Power Inc., Rockwell Automation, Inc., R.T. Vanderbilt Holding Company, Inc., Rust Engineering & Construction, Inc.,

Rust International, Inc., Saint-Gobain Abrasives, Inc.,  
Schneider Electric USA, Inc., Sequoia Ventures, Inc.,  
Siemens Industry, Inc., Southern Insulation, Inc., Spence  
Engineering Company, Inc., Spirax Sarco, Inc., SPX  
Cooling Technologies, LLC, Standard Insulation  
Company of N.C., Inc., Starr Davis Company, Inc., Starr  
Davis Company of S.C., Inc., Thermo Electric Company,  
Inc., Union Carbide Corporation, Vanderbilt Minerals,  
LLC, Viking Pump, Inc., Vistra Intermediate Company,  
LLC, Whittaker, Clark & Daniels, Inc., The William  
Powell Company, Wind Up, Ltd., York International  
Corporation, Zurn Industries, LLC, Defendants,

AND

Heather Donaghy, as Personal Representative of the  
Estate of Shirley Smiley Potter, Deceased, Plaintiffs,

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum  
Environment & Energy, Inc., Armstrong International,  
Inc., Bahnsen, Inc., Beatty Investments, Inc., Bechtel  
Corporation, The Bonitz Company, Brenntag North  
America, Inc., Brenntag Specialties, LLC, Carboline  
Company, Carrier Corporation, Celanese Corporation,  
CNA Holdings, LLC, Cooper Crouse-Hinds, LLC, Covil  
Corporation, Daniel International Corporation, Davis  
Mechanical Contractors, Inc., Eaton Corporation,  
Ellington Insulation Company, Inc., Emerson Electric  
Co., Ericsson Inc., Fisher Controls International, LLC,  
Flowserve Corporation, Flowserve US, Inc., Fluor  
Constructors International, Fluor Constructors  
International, Inc., Fluor Daniel Services Corporation,  
Fluor Enterprises, Inc., General Cable Corporation,  
General Cable Industries, Inc., General Electric  
Company, Gould Electronics, Inc., Goulds Pumps,  
Incorporated, Graybar Electric Company, Inc., Great  
Barrier Insulation Co., Grinnell, LLC, Heat & Frost  
Insulation Company, Inc., Henry Pratt Company, LLC,

Howden North America, Inc., ITT, LLC, J & L Insulation, Inc., K-Mac Services, Inc., Kohler Co., Metropolitan Life Insurance Company, Michelin Corporation, Michelin North America, Inc., Milliken & Company, Occidental Chemical Corporation, The Okonite Company, Inc., Paramount Global, PECW Holding Company, Plastics Engineering Company, Presnell Insulation Co., Inc., Prysmian Cables and Systems USA, LLC, Raytheon Technologies Corporation, Redco Corporation, Riley Power Inc., Rockwell Automation, Inc., R.T. Vanderbilt Holding Company, Inc., Rust Engineering & Construction, Inc., Rust International, Inc., Saint-Gobain Abrasives, Inc., Schneider Electric USA, Inc., Sequoia Ventures, Inc., Siemens Industry, Inc., Southern Insulation, Inc., Spence Engineering Company, Inc., Spirax Sarco, Inc., SPX Cooling Technologies, LLC, Standard Insulation Company of N.C., Inc., Starr Davis Company, Inc., Starr Davis Company of S.C., Inc., Thermo Electric Company, Inc., Union Carbide Corporation, Vanderbilt Minerals, LLC, Viking Pump, Inc., Vistra Intermediate Company, LLC, Whittaker, Clark & Daniels, Inc., The William Powell Company, Wind Up, Ltd., York International Corporation, Zurn Industries, LLC, Defendants, AND Heather Donaghy v. 4520 Corp., Inc.

Appellate Case No. 2024-000342

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ORDER

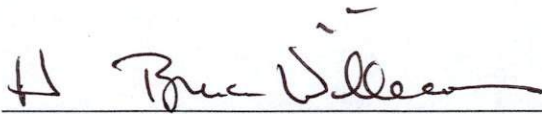
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This consolidated appeal arises out of a circuit court order dated February 23, 2024, denying the receiver's motion to terminate representation of Appellants' counsel of choice and directing Appellants' counsel to cooperate with the receiver. Appellants engaged the legal services of Clement Rivers, LLP. Appellants assert they were deprived of utilizing their choice of counsel, although the order on appeal denied the receiver's motion to terminate Appellants' representation by Clement Rivers. The denial of a motion to terminate representation is not

immediately appealable. *See EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 619, 738 S.E.2d 478, 480 (2013) ("[A]n order denying a motion to disqualify an attorney is not immediately appealable."). Contrary to Appellants' assertions, the order on appeal is distinguishable from that in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d, 707 (2005). In *Hagood*, the supreme court found "an order granting a motion to disqualify a party's preferred attorney *must* be immediately appealed or any later objection in a subsequent appeal [would] be waived." *Id.* at 198, 607 S.E.2d at 710. The action taken by the circuit court in this appeal is more akin to the order appealed in *Hopkins*, wherein the circuit court denied the motion to disqualify counsel. *See Hopkins*, 401 S.C. at 616, 619, 738 S.E.2d at 479, 480. Thus, this order is not immediately appealable.

Appellants also argue the order on appeal is immediately appealable pursuant to section 14-3-330(4) of the South Carolina Code (2017). Specifically, Appellants contend the circuit court's order impermissibly permits the receiver to continue his duties during the pendency of the appeal. This order is also not immediately appealable. *See Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership).

Based on the foregoing, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

  
\_\_\_\_\_, C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

Stephen Lynwood Brown, Esquire  
Russell Grainger Hines, Esquire  
James D. Gandy, III, Esquire  
Graydon V. Olive, IV, Esquire  
Theile Branham McVey, Esquire  
Jamie Rae Rutkoski, Esquire  
Aaron Daniel Chapman, Esquire

**FILED**  
**Apr 12 2024**

David Christopher Humen, Esquire  
Richard Brandon Larrabee, Esquire  
Robert Turner Bonds, Esquire  
John Kenneth Chandler, Esquire  
Stephen Augustus Griffith, Jr., Esquire  
Charles William Branham, III, Esquire  
Jonathan Marshall Holder, Esquire  
John D. Kassel, Esquire  
Brian Montgomery Barnwell, Esquire  
Peter Demos Protopapas, Esquire  
Shanon N. Peake, Esquire  
Jonathan M. Robinson, Esquire

# The South Carolina Court of Appeals

Donna B. Welch, individually and as Personal  
Representative of the Estate of Melvin G. Welch,  
deceased, Respondent,

v.

Advance Auto Parts, Inc., American Honda Motor Co.,  
Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor  
to Atlas Asbestos Co, a foreign company, Bahnson, Inc.,  
Covil Corporation, Daniel International Corporation,  
Davis Mechanical Contractors, Inc., Ellington Insulation  
Company, Inc., Fluor Constructors International f/k/a  
Fluor Corporation, Fluor Constructors International, Inc.,  
Fluor Daniel Services Corporation, Fluor Enterprises,  
Inc., General Parts, Inc. individually and as successor-in-  
interest to Carquest Corporation; Goodrich Corporation  
f/k/a The B. F. Goodrich Company, The Goodyear Tire  
& Rubber Company, Graybar Electric Company, Inc.,  
Honeywell International, Inc. individually and as  
successor-in-interest to Allied Signal, Inc., as successor  
to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner  
Morse Tec LLC, and successor-by-merger to Borg-  
Warner Corporation, Occidental Chemical Corporation  
as successor to Durez Corporation; O'reilly Automotive  
Stores, Inc., Paramount Global f/k/a Viacomcbs Inc.,  
f/k/a CBS Corporation, a Delaware corporation f/k/a  
Viacom, Inc., successor-by-merger to CBS Corporation,  
a Pennsylvania corporation, f/k/a Westinghouse Electric  
Corporation, Pneumo Abex LLC successor-in-interest to  
Abex Corporation, Redco Corporation f/k/a Crane Co.,  
Reinz Wisconsin Gasket LLC f/k/a and/or successor to  
Reinz Wisconsin Gasket Co. and Wisconsin Gasket  
Manufacturing Co., a wholly owned subsidiary of Dco  
LLC, Rust Engineering & Construction, Inc., Rust  
International Inc., Southern Insulation, Inc., Spirax  
Sarco, Inc., Union Carbide Corporation, Westrock  
MWV, LLC individually and as successor-in-interest to

Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

of which Atlas Turner, Inc., The Continental Insurance Company, Certain Underwriters at Lloyd's London, and Certain London Market Companies are the Appellants,

and

Donna B. Welch, individually and Personal Representative of the Estate of Melvin G. Welch, deceased,

and

Peter D. Protopapas, Duly Appointed Receiver for Atlas Turner, Inc., are Respondents.

Appellate Case No. 2024-000337

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ORDER


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This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants' motions for protection from discovery. These orders are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRPC, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a

receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

  
\_\_\_\_\_, C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

Matthew Todd Carroll, Esquire  
Mary Elizabeth O'Neill, Esquire  
Stephen Lynwood Brown, Esquire  
James D. Gandy, III, Esquire  
Stephen Augustus Griffith, Jr., Esquire  
G. Murrell Smith, Jr., Esquire  
Jonathan M. Robinson, Esquire  
Shanon N. Peake, Esquire  
Austin Tyler Reed, Esquire  
Brian Montgomery Barnwell, Esquire  
John Kenneth Chandler, Esquire  
Harry Lee, Esquire  
A. Victor Rawl, Jr., Esquire

**FILED**  
**Apr 12 2024**

# The South Carolina Court of Appeals

Ted Everette Mitchell, individually and as Executor of  
the Estate of Patsy Ann Mitchell, Plaintiff,

v.

3M Company, ABB Inc.; Advance Auto Parts, Inc.; Air  
& Liquid Systems Corporation; Alfa Laval, Inc.;  
Amentum Environment & Energy, Inc.; Ametek, Inc.;  
Anchor/Darling Valve Company; A.O. Smith  
Corporation; Armstrong International, Inc.; Asbestos  
Corporation Limited; Atlas Turner, Inc.; AWT Air  
Company, Inc.; Bahnson, Inc.; Beatty Investments, Inc.;  
Bechtel Investments, Inc.; The Bonitz Company; BW/IP  
Inc.; Cameron International Corporation; Cape PLC;  
Carrier Corporation; Carver Pump Company; Champlain  
Cable Corporation; Cleaver-Brooks, Inc.; Clyde Union  
Inc.; Covil Corporation; Crane Co.; Crane Instrument &  
Sampling, Inc.; Daniel International Corporation; Davis  
Mechanical Contractors, Inc.; Detroit Stoker Company,  
LLC; Ellington Insulation Company, Inc.; Erico  
International Corporation; Fisher Controls International,  
LLC; Flowserve US Inc.; Fluor Constructors  
International; Fluor Constructors International, Inc.;  
Flour Daniel Services Corporation; Fluor Enterprises,  
Inc.; FMC Corporation; Ford Motor Company; Foster  
Wheeler Energy Corporation; Gardner Denver, Inc.;  
General Electric Company; General Parts, Inc.; Genuine  
Parts Company; The Goodyear Tire & Rubber Company;  
The Gorman-Rupp Company; Goulds Pumps,  
Incorporated; Graphic Packaging International, LLC;  
Great Barrier Insulation Co.; Grinnell LLC; Hercules  
LLC; Honeywell International, Inc.; IMO Industries Inc.;  
Industrial Holdings Corporation; International Paper  
Company; ITT LLC; J.&L. Insulation, Inc.; Metropolitan  
Life Insurance Company; Morse Tec LLC; Moyno, Inc.;  
NIBCO Inc.; Paramount Global; Pennsylvania  
Transformer Technology, Inc.; Presnell Insulation Co.,

Inc.; Redco Corporation; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric Systems USA, Inc.; Sequoia Ventures Inc.; Service Products, Inc.; The Sherwin-Williams Company; Southern Insulation, Inc.; Spirax Sarco, Inc.; SPX Corporation; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; 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; Zurn Industries, LLC, Defendants,

Asbestos Corporation Limited, by and through its duly appointed Receiver, Peter D. Protopapas, Third Party Plaintiff/Respondent,

v.

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America; The Continental Insurance Company; Federal Insurance Company; Travelers Casualty and Surety Company f/k/a Aetna Life & Casualty Co., Third Party Defendants,

of which Travelers Casualty and Surety Company f/k/a Aetna Life and Casualty Co., and The Continental Insurance Company are the Appellants.

Appellate Case No. 2024-000341

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ORDER

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This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants'

motions for protection from discovery. These orders are not immediately appealable. See *Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRCRCP, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

 C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

**FILED**  
**Apr 12 2024**

Matthew Todd Carroll, Esquire  
Mary Elizabeth O'Neill, Esquire  
Stephen Lynwood Brown, Esquire  
James D. Gandy, III, Esquire  
Brian Montgomery Barnwell, Esquire  
John Kenneth Chandler, Esquire  
Stephen Augustus Griffith, Jr., Esquire  
Austin Tyler Reed, Esquire  
Jonathan M. Robinson, Esquire  
Shanon N. Peake, Esquire  
G. Murrell Smith, Jr., Esquire  
Harry Lee, Esquire  
A. Victor Rawl, Jr., Esquire

**FILED**  
**Apr 12 2024**

# The Supreme Court of South Carolina

Lenora Childers, Individually and as Personal  
Representative of the Estate of Lewis C. Childers,  
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,  
Inc.; General Boiler Casing Company, Inc.; HEFCO,  
Inc.; J.R. Deans Company, Inc.; Payne & Keller  
Company; SFB, Incorporated; Stafford Insulation  
Company; Standard Insulation Company of N.C., Inc.;  
Systra Engineering, Inc.; United Construction Co. of  
Rome, Inc.; Wind Up, Ltd., Individually and as  
Successor-in-Interest to Pipe & Boiler Insulation, Inc.  
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of  
Rome, Inc.; Wind Up, Ltd., Individually and as  
Successor-in-Interest to Pipe & Boiler Insulation, Inc.  
f/k/a Carolina Industrial Insulating Co.; and Payne &  
Keller Company, By and Through Their Duly Appointed  
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and  
as Successor to Northern Insurance Company of New  
York, Maryland All American General Insurance  
Company, and Maryland Casualty Company); Allstate  
Insurance Company; John Tighe; Sean Antony Beatty;  
Dennis William Cahill; Catherine Ann Carlino; Andre  
Lefebvre; David Dean Shumway; Gil Chandler; Michael  
Davenport; Linda Young Pettigrew; Gwyn Wallace  
Fuller; Daniel Robert Keddie; Julie Ann Fortune;  
Michael John Crall; James Francis Meehan; Larry Gene  
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital

Corp.; Admiral Insurance Company; Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna

Casualty and Surety Company, are Appellants.

Appellate Case No. 2024-000005

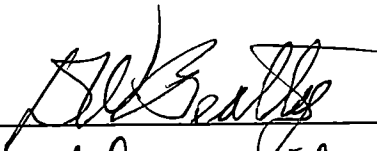
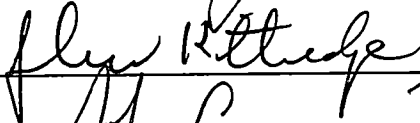
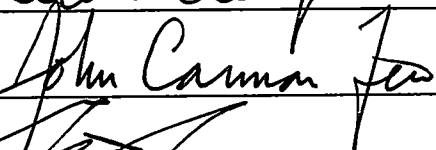


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ORDER

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Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina  
March 27, 2024

cc:

Wesley Brian Sawyer  
Brian Montgomery Barnwell  
John Belton White, Jr.  
Marghretta Hagood Shisko  
Scott Shutte  
Christopher Rutledge Jones

G. Murrell Smith, Jr.  
Jonathan M. Robinson  
Shanon N. Peake  
Matthew Todd Carroll  
Mary Elizabeth O'Neill  
Harry Lee  
The Honorable Jenny Abbott Kitchings

# EXHIBIT B

A. VICTOR RAWL, JR.  
PARTNER  
VRAWL@GRSM.COM  
DIRECT DIAL: (843) 714-2501



ATTORNEYS AT LAW  
677 KING STREET, SUITE 450  
CHARLESTON, SC 29403  
WWW.GRSM.COM

September 4, 2024

Via Electronic Mail Only

John T. Lay, Jr.  
Gallivan White Boyd  
jlay@gwblawfirm.com

Re: *John A. Tibbs and Margaret B. Tibbs vs. 3M Company, et al.*  
Case No. 2023-CP-40-01759  
Objections to the Deposition Notices of the Charter Defendants

Dear John T.:

As you know, we represent Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (collectively, "Charter Defendants"). We write to object to the deposition notices that your office emailed to Charter Defendants unilaterally setting depositions of Charter Defendants. Charter Defendants have several objections to these deposition notices, including but are not limited to:

1. Charter Defendants object to the deposition notices 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. There are appeals pending regarding virtually every issue in dispute in this case, including the receivership appointment, the Receiver's and the circuit court's jurisdiction to proceed, whether the Receiver should be enjoined from seeking discovery, whether our clients were rightly held in contempt for objecting to proceedings while the matter is on appeal, whether the circuit court rightly struck our clients' defense of a general denial, and whether the circuit court rightly struck our clients' jury demand. Rule 205, SCACR, removes jurisdiction from the circuit court over all issues affected by those appeals, which necessarily includes these three deposition notices. 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).”).

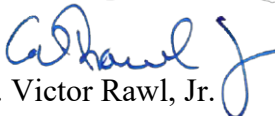
2. Charter Third-Party Defendants previously notified the circuit court and all parties, including the Receiver, of the pendency of the appeal by filing a Notice of Appeal. An appellate ruling in Charter Third-Party Defendants’ favor would result in the dissolution of the receivership. A dissolution 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 the Charter Third-Party Defendants—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.
3. Defendant Asbestos Corporation Limited (“ACL”) filed a notice of appeal on September 13, 2023 as to two orders “Order Holding Atlas Asbestos Company, Ltd. in Contempt” (September 8, 2023) and “Order on Plaintiffs’ Motion to Appoint a Receiver” (September 8, 2023). This appeal is still pending and affects all aspects of the *Tibbs* case. All third-party claims against the Third-Party Defendants, and all discovery sought from the Charter Defendants—including these deposition notices—accordingly are “affected by the appeal[s]” under Rule 205, SCACR, and the circuit court lacks jurisdiction over them.
4. Even if the Receiver disagrees about the merits of some of the above-described appeals, the South Carolina Supreme Court has been clear that a litigant’s voluntary participation in discovery waives its objections to the legitimacy of that discovery. E.g., *Da-vis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014). To present a witness for deposition at this point would risk waiving the Charter Defendants’ numerous objections to discovery (and all other litigation activities). Accordingly, as a matter of South Carolina law, they cannot comply with these notices without putting their rights in jeopardy.

5. The Receiver has no authority to act as there exists no order of appointment that contains the mandatory “clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-60.” S.C. Code Ann. § 15-65-60. Without this mandatory clause, any receivership appointment order is void *ab initio*. *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343 (1928).
6. This matter is moot as Plaintiff has dismissed Cape. See Tolling Agreement between Receiver and Plaintiff’s counsel; See also E-mail from Plaintiff’s counsel to court dated April 8, 2024 notifying court that Cape is no longer a defendant.
7. Charter and Central Mining are UK companies and cannot be compelled to come to South Carolina (a state with which neither has any connection whatsoever) to give testimony or to produce materials.
8. Receiver filed a “Notice of Filing of Attempt to Enjoin the Receiver in the High Court of Justice of England and Wales” in this case. Attached to that filing was a pre-suit notice from Cape PLC and Cape Intermediate Holdings Limited, through which both disclaim any purported authority that the Receiver claims to have to act on their behalf. Absent the Receiver honoring the instructions of the companies on whose behalf he purports to act, that notice further indicates their intent to engage a court that has jurisdiction over them—that is, an English court, not a court in South Carolina—to declare the invalidity of this receivership. The Charter Defendants cannot agree to submit to further litigation activities at the insistence of the Receiver when the validity of his appointment is in dispute before a court with jurisdiction over the entities on whose behalf he purports to act.

We appreciate your attention to these objections, and your understanding as to why our clients cannot honor these deposition notices. By sending this correspondence, our clients do not waive any other objections they may have to discovery, including to these three deposition notices, nor do they waive their standing objection to personal jurisdiction.

Sincerely,

GORDON REES SCULLY MANSUKHANI, LLP

  
A. Victor Rawl, Jr.

cc: All counsel of record

M. Todd Carroll  
Direct Dial: 803.454.7730  
Direct Fax: 803.381.9130  
E-mail: todd.carroll@wbd-us.com

September 4, 2024

**Via Electronic Mail**

John T. Lay, Jr.  
Gallivan White Boyd  
jlay@gwblawfirm.com

Re: *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759  
Objections to the Deposition Notices of the Altrad Defendants

Dear John T.:

We write to object to the deposition notices that your office emailed to our clients unilaterally setting depositions of Mr. Altrad and Altrad Investment Authority SAS. As you would expect, our objections are several and include, but are not limited to:

(1) There are appeals pending regarding virtually every issue in dispute in this case, including the receivership appointment, the Receiver's and the circuit court's jurisdiction to proceed, whether the Receiver should be enjoined from seeking discovery, whether our clients were rightly held in contempt for objecting to proceedings while the matter is on appeal, whether the circuit court rightly struck our clients' defense of a general denial, and whether the circuit court rightly struck our clients' jury demand. These appeals are fully authorized by South Carolina law, they are proper, and they remain pending. Rule 205, SCACR, removes jurisdiction from the circuit court over all issues affected by those appeals, which necessarily includes these two deposition notices.

(2) Even if the Receiver disagrees about the merits of some of the above-described appeals, the South Carolina Supreme Court has been clear that a litigant's voluntary participation in discovery waives its objections to the legitimacy of that discovery. *E.g., Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014). To present a witness for deposition at this point would risk waiving the Altrad Defendants' myriad objections to discovery (and all other litigation activities). Accordingly, as a matter of South Carolina law, they cannot comply with these notices without putting their rights in jeopardy.

(3) As you are aware, the Altrad Defendants are both French—an individual citizen and a company—and cannot be compelled to come to South Carolina (a state with which neither has any connection whatsoever) to give testimony or to produce materials. French law prohibits

them from responding. Accordingly, as a matter of law in their home jurisdiction, they cannot participate in discovery.

(4) On Friday, August 29, 2024, your colleague Mr. Chandler filed a “Notice of Filing of Attempt to Enjoin the Receiver in the High Court of Justice of England and Wales” in the above-referenced case. Attached to that filing was a pre-suit notice from Cape PLC and Cape Intermediate Holdings Limited, through which both disclaim any purported authority that the Receiver claims to have to act on their behalf. Absent the Receiver honoring the instructions of the companies on whose behalf he purports to act, that notice further indicates their intent to engage a court that has jurisdiction over them—that is, an English court, not a court in South Carolina—to declare the invalidity of this receivership. The Altrad Defendants cannot agree to submit to further litigation activities at the insistence of the Receiver when the validity of his appointment is in dispute before a court with jurisdiction over the entities on whose behalf he purports to act.

We appreciate your attention to these objections, and your understanding as to why our clients cannot honor these deposition notices. By sending this correspondence, our clients do not waive any other objections they may have to discovery, including to these two deposition notices, nor do they waive their standing objection to personal jurisdiction. With kind regards, I remain

Very truly yours,

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Todd Carroll

cc: All Counsel of Record

# EXHIBIT C

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30 August 2024

**FAO:** Peter D. Protopapas  
Rikard & Protopapas, LLC,  
2110 N Beltline Blvd,  
Columbia SC 29204

**BY EMAIL ONLY:** [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)

Dear Mr Protopapas

**Re: Pre-Action Letter Regarding Declaratory and Injunctive Relief Contemplated Before the English court**

**Introduction**

We are instructed by Cape Intermediate Holdings Limited ("**CIHL**") (a company incorporated in England and Wales) and Cape Plc ("**Cape plc**") (a company incorporated under the laws of Jersey) (together, "**the Claimants**").

We are writing to request that:

1. you agree to consent by 12 pm on Friday 6 September to the terms of the draft court order we propose to seek from the English Court, which is provided at Annex A ("**the Draft Order**").
2. alternatively, should you be unwilling to agree to the terms of the Draft Order, you agree to accept service of our clients' claim form and related documents on counsel you have engaged in London (Morgan, Lewis & Bockius UK LLP), or out of the jurisdiction at 2110 N Beltline Blvd, Columbia, South Carolina 29204, United States of America.

Should you decline to consent to the Draft Order, our clients intend to commence proceedings against you in the English Court pursuant to Part 8 of the CPR for an order substantially in the form set out in the Draft Order ("**the Part 8 Claim**"). Should you decline to provide your agreement to accept service, our clients will make an application for permission to serve the Claim out of the jurisdiction.

## Factual background to the Part 8 Claim

CIHL is a holding company registered in England and Wales and is the successor to “Cape Asbestos Company Ltd” (which was incorporated in 1893).

Cape plc is a company incorporated in Jersey in 2011. It is the ultimate parent company of the Cape group of companies (“**the Cape Group**”). In 2017 Cape plc was acquired by Altrad UK Ltd (which is part of the Altrad group of companies – “**the Altrad Group**” – a world leader in industrial services with a turnover of £5 billion per year).

The Part 8 Claim arises in the context of (and relates to) certain legal proceedings in the US commenced against “Cape plc” and CIHL.

These proceedings (“**the USA Proceedings**”) involve two separate actions in the Court of Common Pleas, State of South Carolina, County of Richland (“**the South Carolina Court**”) against various defendants for the alleged exposure of the respective plaintiffs to asbestos. The two separate actions are: (1) the “**Park Claim**” (which was initiated in June 2021 by Ms Park, and subsequently taken over by her son) and (2) the “**Tibbs Claim**” (which was brought in April 2023 by Mr and Mrs Tibbs).

In the Park Claim, the Summons and Complaint names “Cape plc” as a defendant – and an Amended Summons and Complaint has added CIHL as a defendant. In the Tibbs Claim, “Cape plc” is a named defendant (but CIHL is not a named defendant).

The Part 8 Claim relates to certain of your actions in the Park Claim and the Tibbs Claim – which actions you purport to pursue in the name of and on behalf of the Claimants. Specifically, we refer to the following:

### 1. The Receivership Order.

- (a) This is the receivership order of Toal J dated 16 March 2023 (“**the Receivership Order**”) that was granted pursuant to the Park Plaintiffs’ motion dated 6 March 2023 (“**the Receivership Motion**”). (see enclosure)
- (b) The Receivership Order<sup>1</sup> appears to provide you with very broad powers in your capacity as receiver, including “**the power and authority [to] fully administer all assets of Cape<sup>2</sup>, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be**” (emphasis added).
- (c) The Receivership Motion was based on rule 15-65-10(4) of the South Carolina Code which provides that a receivership order can be made in relation to a company where it (1) is dissolved (2) is insolvent or in imminent danger of insolvency or (3)

---

<sup>1</sup> While it is only Cape plc that is named in the Receivership Order, you have subsequently confirmed that CIHL was the only company over which the Receivership Order was intended to be made, and the Claim has been issued in the name of both the Claimants (i.e. CIHL and Cape plc) as ‘belt and braces’ and in order to provide maximum security/protection to those companies’ respective positions.

<sup>2</sup> “Cape” is defined in the Receivership Order as “*Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates*”.

has forfeited its corporate rights. Neither Cape plc or CIHL have been dissolved, nor are they insolvent, nor are they in imminent danger of insolvency.

- (d) Despite the Tibbs Plaintiffs never having issued a motion seeking to appoint you as a receiver of Cape plc or CIHL in the Tibbs Claim, you have purported to act as such.

(1) The 3P Complaint.

- (a) These are the third-party proceedings issued by you on 30 June 2023 in the name of and on behalf of Cape plc against a variety of defendants ("**the 3P Complaint**").
- (b) The 3P Complaint was stated to be brought by "*Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas*" against various third party defendants ("**the Third-Party Defendants**") including, but not limited to, "Cape Holdco Ltd", "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 Limited", "Hawk Bidco US Inc", "Arranco US, LLC", "Sparrows Offshore, LLC" and "The Sparrows Group LLC".
- (c) The Third-Party Defendants include, *inter alia*, both the direct subsidiaries and the immediate parent companies of the Claimants.
- (d) The 3P Complaint is based on many highly contentious and wide-ranging allegations against Cape itself – and also purports to constitute admissions by Cape which are against the best interests of Cape.
- (e) The claims sought in the 3P Complaint are based on unjust enrichment and/or constructive trust and/or alter-ego and veil-piercing liability and/or accounting. The claims are for an indeterminate amount.
- (f) There is no express authority given to a receiver under rule 15-65-10(4) of the South Carolina Code to pursue third-party derivative claims and the Receivership Order did not expressly authorise you to initiate any third-party derivative proceedings.
- (g) Despite this, you have taken the various steps in the name of Cape plc in pursuit of the 3P Complaint. Amongst other things, this has included: (i) seeking and obtaining the 3P Complaint Default Judgement against certain Third-Party Defendants including the Claimants' direct parent and subsidiaries (which include companies in the Altrad Group, and upon which the Cape Group rely for funding/financing and business cross-opportunities); (ii) making motions for disclosure, adverse inferences and sanctions for adverse inferences against certain Third-Party Defendants.

In terms of the Park Claim and the Tibbs Claim, the position is that at no stage have CIHL or Cape plc submitted to the jurisdiction of the South Carolina Court in the Park Claim or the Tibbs Claim. In this regard, CIHL and Cape plc refer to and rely upon the decision of the English Court of Appeal in *Adams v Cape Industries Plc* [1990] 1 Ch 433 ("**Adams v Cape**"). Nor has there been any judgment made in the Park Claim or the Tibbs Claim against CIHL or Cape plc in the State of South Carolina.

**Our clients' reasons for requesting relief from the English court should you fail to agree to the terms of the Draft Order**

As a matter of English private international law (which is the law governing the incorporation of CIHL) the Receivership Order has not been made by a court of competent authority, it cannot be recognised or enforced as such in England and Wales, and it provides no legitimate basis upon which you can act as the receiver of CIHL. You therefore have no authority or mandate to act on behalf of CIHL, and the directors of CIHL require you to cease and desist from purporting to do so. The same applies in respect of Jersey law and Cape plc.

In this regard:

1. CIHL is a holding company incorporated in England, which is where its management and control is based. It does not carry on any business activities in the US, or the State of South Carolina (and never has) and its management and control is not, and never has been, in the US or the State of South Carolina. It also has no, and never has had any, assets in the US or the State of South Carolina.
2. Cape plc is a holding company incorporated in Jersey, its management and control is not in the US or the State of South Carolina, it does not carry on business in the US, or the State of South Carolina and it has no, and never has had any, assets in the US or the State of South Carolina.
3. Accordingly, neither CIHL nor Cape plc have any connection with the State of South Carolina.
4. In terms of the Park Claim and the Tibbs Claim, the position is that at no stage have CIHL or Cape plc submitted to the jurisdiction of the South Carolina Court in the Park Claim or the Tibbs Claim.
5. In these circumstances, as a matter of English private international law the Receivership Order made by the South Carolina Court is not capable of recognition or enforcement by the English Court. It does not satisfy the "*sufficient connection*" threshold test for the recognition of the appointment of a foreign receiver as a matter of English private international law (in relation to which see the decision Goulding J in Re Schemmer [1975] Ch 273). As to this:
  - (a) Pursuant to this test, the English Court is required to determine whether a foreign court was jurisdictionally capable to make the appointment according to the relevant principles of English private international law.
  - (b) The "*sufficient connection*" test involves looking at the place of incorporation, where a company's management and control is based, whether a company is carrying on business within the jurisdiction of the foreign court and whether a company has submitted to the jurisdiction of the foreign court.
  - (c) In the light of the above facts, none of those criteria are satisfied in this case.
6. In this regard, it should be noted that the only relevant American subsidiary of CIHL was North American Asbestos Corporation, which was dissolved in 1978 and has been the subject of controversy in historic American asbestos litigation. However, in Adams v Cape the English Court of Appeal specifically found that CIHL was not present in the US jurisdiction via NAAC

for the purposes of applying the common law test on the recognition of foreign judgments and that it had not otherwise submitted to the jurisdiction of the US Courts. That is the established legal position.

7. Given that, the English Court cannot recognise a final (let alone an interlocutory) US judgment against CIHL as having been made by a jurisdictionally competent foreign court it therefore follows that the English Court cannot recognise a receivership order against CIHL made on the same basis. The same applies in respect of Cape plc.
8. In this regard, the question of capacity and the constitution of the Claimants, namely, whether the acts of its directors, or others who purport to be the companies' agents, are the acts of CIHL is exclusively a question of English law, in the case of CIHL, and Jersey law in the case of Cape Plc. The law of the place of incorporation determines who are the corporation's officials authorised to act on its behalf. The appointments of the directors of CIHL are therefore governed by the law of England in the case of CIHL, and Jersey in the case of Cape plc.
9. Further, as a matter of English law, the appointment of the directors of CIHL and their competence to act on its behalf is legally unaffected by the Receivership Order made by the South Carolina Court. The same applies under Jersey law in respect of Cape plc. In this regard, any questions in relation to the governance of a company incorporated in England and Wales are plainly and properly a matter for the supervision and determination of the English Court.
10. The *de jure* directors of the Claimants (whose authority arises pursuant to the Claimants' articles of association, as well as the English Companies Act 2006 and the Jersey Companies Law 1991) remain in lawful control of the Claimants. Accordingly, the directors of both of the Claimants are entitled to seek the relief sought from the Court to be able to manage respectively CIHL and Cape plc in accordance with their best interests.
11. Accordingly, and for these reasons, and given that as a matter of English law the South Carolina Court was not jurisdictionally competent to make the Receivership Order, you have had no legitimate basis for acting and you have been acting without the Claimants' authority and/or any mandate from the Claimants.
12. The directors of CIHL and Cape plc are entitled to the relief sought against you to prevent the actual and potential harm caused by your actions. They rely *inter alia* on the following:
  - a. The negative impact on directors/management. There are currently two conflicting centres of authority, which is highly prejudicial to the directors of the Claimants and the proper management of those companies (and the broader group of which they form part).
  - b. The negative impact on operations/business. Customers and/or suppliers of the Cape Group (who will carry out regular credit checks and adverse media checks through their online reporting databases) will be concerned as to the extent to which authority is apparently vested in yourself as receiver and this could adversely impact their willingness to do business with the companies within the Cape Group (which are the operational subsidiaries of CIHL and Cape plc).
  - c. The issues associated with your purported authority to deal with all the assets of the Claimants on a worldwide basis. In this regard, the Claimants own substantial assets

worldwide (for example, the shares that they own in the subsidiary trading companies of the Cape Group – which has a turnover of approximately £1 billion per year).

- d. The negative impact on the reputation of the Claimants and the broader Cape Group. The Cape Group has a valuable brand, both in the UK and abroad, which it has sought to protect and secure.
  - e. The negative impact on the Scheme of Arrangement in respect of CIHL (and 12 other subsidiary companies in the Cape Group) which was sanctioned in 2006 and continues to be supervised by the English High Court.
  - f. The negative impact on the funding/financing arrangements of the Altrad Group (which have an indirect effect on the funding/financing of the Claimants and the broader Cape Group).
13. In addition, the issuing and pursuit of the 3P Complaint is abusive, vexatious and unconscionable. The 3P Complaint makes multiple – and highly contentious – allegations directed against the Claimants. It also purports to constitute admissions that have not been authorised by the directors of the Companies.
14. The 3P Complaint is self-evidently contrary to the Companies' best interests and the Companies are entitled to injunctions from the English Court requiring you to cease and desist pursuing such claims in their respective names.

In these circumstances, the directors of CIHL and Cape plc are entitled to the assistance of the English court as the duly appointed directors of CIHL and Cape plc in order to enable them to administer, manage and run the companies efficaciously in accordance with their legal duties and in the best interests of the companies; and to prevent and contain the manifest prejudice to both them and the wider Cape group of companies by your conduct, which is directly contrary to the interests of CIHL and Cape plc and is abusive, vexatious and unconscionable.

There is a real and present dispute as to who is in control and authorised to act on behalf of the Claimants, and it is appropriate for the Court to make the declarations sought. In addition, it is appropriate to grant the injunctive relief sought where (1) you have no legitimate authority to act on behalf of the Claimants (and, in that regard, you have harmed the rights of the Claimants) and (2) your conduct is abusive, vexatious and unconscionable.

Accordingly, CIHL and Cape plc seek your consent to the Draft Order and, if not provided, the assistance of the English Court to obtain clarification that you have no legal authority to act on behalf of our clients, that authority remains vested in the directors, and restraining you from taking any further steps in the name of Cape as set out in the Draft Order.

#### **Requirement for you to provide consent on an urgent basis**

As you will be aware, various of the Third-Party Defendants in the 3P Complaint, applied to transfer the 3P Complaint from the South Carolina Court to a Federal Court. By an order of 13 August 2024, the Federal Court remanded the case back to the South Carolina Court.

In these circumstances and given the imminent trial of the 3P Complaint on 9 December 2024 – which is not being brought with the authority of the Claimants and is plainly contrary to their interests – it is paramount that the Claim is addressed urgently.

In consideration for our clients refraining from taking action against you in the English Court, you are required to agree to the terms of the Draft Order by no later than 12pm on 6 September 2024.

Should you fail to do so, we will without further notice apply to the English Court for the relief in the form of the Draft Order.

For the avoidance of doubt, nothing in this letter should be considered as a waiver of any of our clients' rights which are, to the fullest extent, reserved.

### **Part 8 of the Civil Procedure Rules**

In accordance with paragraph 13.3 of the Business and Property Courts of England & Wales Chancery Guide 2022, we hereby notify you that the use of Part 8 of the England & Wales Civil Procedure Rules is being contemplated to issue the intended claim against you.

We consider that Part 8 is the more appropriate route than Part 7 in the circumstances of the current dispute, for the following reasons:

1. The contemplated claim does not relate to any substantial dispute of fact. The contemplated claim is merely requesting the court's decision on a question by way of declaratory and injunctive relief.
2. A quick resolution of the contemplated claim is required given the imminent trial date of the 3P Complaint on 9 December 2024.

In accordance with paragraph 13.3 of the Chancery Guide, we have attached the Draft Order at Annex A (which we ask you to consent to).

Given that the relief sought in the Claim arises out of the application of well-established principles of English private international law to the USA Proceedings, we do not contemplate that there will a substantial factual dispute (or that disclosure will be necessary).

### **Agreement to Service Out of the Jurisdiction**

As you are aware, on 13 July 2023 you used David Waldron of Morgan, Lewis & Bockius UK LLP to attempt to serve documents from the USA Proceedings on Altrad Services Ltd.

In accordance with the provisions of the English Civil Procedure Rules, and to the extent that you do not agree to provide the undertakings requested above, we request your agreement to accept service of the claim form and associated documents:

1. by way of service on Morgan, Lewis & Bockius UK LLP, Condor House, 5-10 St. Paul's Churchyard, London EC4M 8AL; or, in the alternative,
2. outside the jurisdiction of England and Wales at your address at 2110 N Beltline Blvd, Columbia, South Carolina 29204, United States of America

Please confirm your consent to accept service of the claim form by either (1) or (2) by 6 September 2024, so as to facilitate the efficient and timely progress of the contemplated proceedings. Should you

fail to provide your agreement to accept service, our clients will make an application for permission to serve out of the jurisdiction.

**Pre-Action Protocol**

This letter is being sent to you in accordance with the Practice Direction on Pre-Action Conduct and Protocols (the “**Pre-Action PD**”) contained in the Civil Procedure Rules (CPR) (albeit that, as envisaged in paragraph 13 of the Pre-Action PD, the urgency of the matter means that it is not possible to give you the full time suggested for your response to this letter). We refer you to paragraphs 13 to 16 of the Pre-Action PD concerning the court’s powers to impose sanctions for failing to comply with its provisions.

We enclose the key documents which we intend to rely on to substantiate our clients’ claims. Ignoring this letter will lead our clients to commence proceedings against you and may increase your liability for costs.

We look forward to your response.

Yours faithfully,

*Winston & Strawn London LLP*

**Winston & Strawn London LLP**

Enc. Receivership Order

Annex A – Draft Order

Claim No. [#]

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES

BUSINESS LIST (CHD)

Before [Mr]/[Mrs] Justice []

B E T W E E N:

- (1) CAPE INTERMEDIATE HOLDINGS LIMITED  
(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

---

**[DRAFT] ORDER**

---

**UPON THE CLAIM** of Cape Intermediate Holdings Limited (“**CIHL**”) and Cape plc (“**the Claimants**”) issued by Part 8 Claim Form on [] September 2024

**AND UPON HEARING** Leading Counsel for the Claimants [and Leading Counsel for the Defendant]

**AND UPON READING** the evidence, being the first witness statement of Ran Oren dated [] September 2024 (“**Oren 1**”)

**IT IS DECLARED THAT**

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (“**the South Carolina Court**”) dated 16 March 2023 appointing Mr Peter Protopapas (“**Mr Protopapas**”) as a receiver over the Claimants (“**the Receivership Order**”) is not recognised and has no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act as a receiver in relation to the Claimants in England and Wales or worldwide and has no power or authority in respect of

the Claimants in England and Wales or worldwide to carry out the acts referred to in paragraph 5-8 below.

3. The rights and duties of the directors of the Claimants remain unaffected by the appointment of Mr Protopapas as receiver of the Claimants pursuant to the Receivership Order.
4. Mr Protopapas has and had no power or authority to act as the receiver of the Claimants in the South Carolina Court in respect of the Park claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority to issue third party claims in the Tibbs Claim against any of the third party defendants in those proceedings, including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd (viii) Hawk Bidco (US) Inc (ix) ArranCo US LL (x) Sparrows Offshore LLC.

**AND IT IS ORDERED THAT:**

5. Mr Protopapas be enjoined in England and Wales and worldwide from acting or purporting to act as a receiver of the Claimants pursuant to the Receivership Order.
6. Mr Protopapas be enjoined in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of the Claimants.
7. Mr Protopapas be enjoined from acting or purporting to act as a receiver of the Claimants in the Park Claim and the Tibbs Claim (as defined in Oren 1).
8. Mr Protopapas be enjoined from litigating as "Cape plc" or CIHL in any legal proceedings in the State of South Carolina, USA or elsewhere.

# EXHIBIT D



# Contact Us

Home > Contact Us

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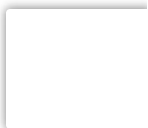
Modern Slavery Statement

Privacy policy

Gender Pay Gap Report

GDPR Policy

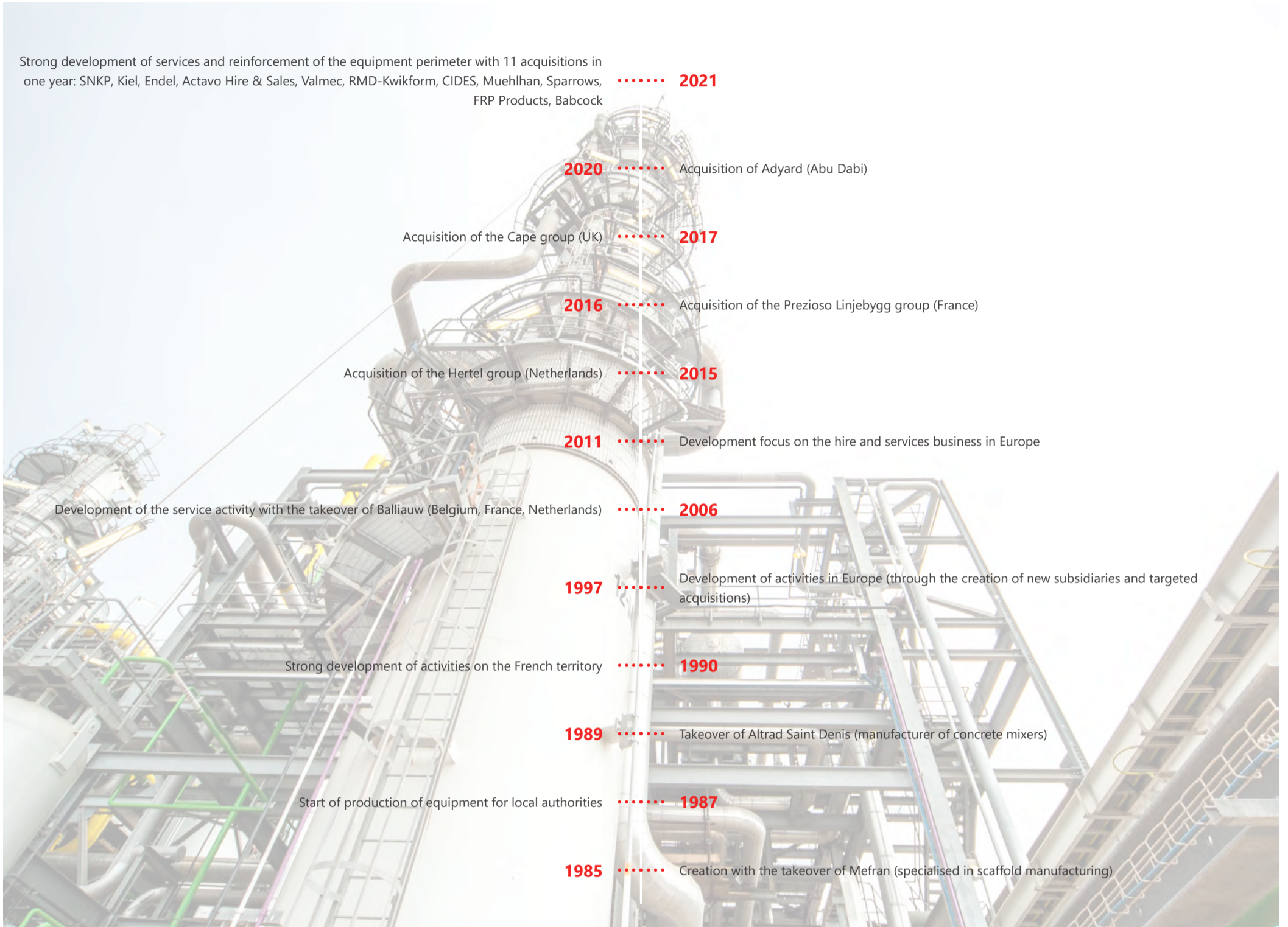
CookiesGDPR Policy



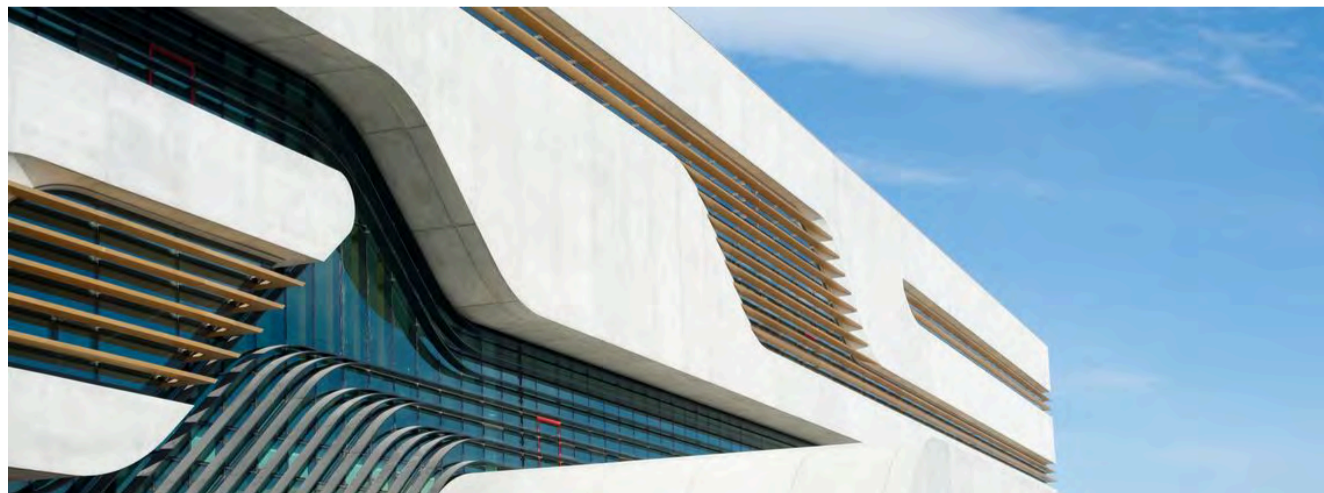


# Our History

Strong development of services and reinforcement of the equipment perimeter with 11 acquisitions in one year: SNKP, Kiel, Endel, Actavo Hire & Sales, Valmec, RMD-Kwikform, CIDES, Muehlhan, Sparrows, FRP Products, Babcock



# Heritage & Future



Altrad Services is organised around multidisciplinary teams with an unprecedented wealth of expertise. This offer, the very first of its kind available in the industrial market, is adapted to the specific needs of each customer. This high added value and wealth creation approach is the result of several unique stories that gave birth to Altrad Services.

- 1985: The Altrad group is founded in Montpellier, France.
- Today, the group is still led by its founder Mohed Altrad. In 30 years, it has become a major player in the construction equipment manufacturing and distribution sector.

- In 2006, the group arrived at a significant turning point through the takeover of Balliauw which specialises in the provision of services to the industrial sector.
- In 2015-2017, this strategy is confirmed as Altrad triples its size in just two years, following the takeover of three leading European industrial services companies: firstly, the Dutch firm Hertel, then the French group Prezioso Linjebygg, and finally the British leader Cape plc.
- These three major operations complete the already significant list of companies which specialise in the provision of industrial services: Altrad Services is today the successful integration of various Altrad companies, all leaders in their respective markets: Altrad Balliauw, Hertel, Prezioso Linjebygg, Cape plc, but also Altrad Rodisola, Altrad NSG, Poujaud and Comi Service.
- From 2020, the Altrad group continues its external growth operations: in 2020, Adyard joins the ranks of the Altrad services companies. Then, 2021 becomes the year of unprecedented acquisitions, both in terms of integrated companies (eleven), and additional revenues generated from these growth operations (around €1.7 billion).



*« When I acquired my first company in 1985, I had no plans in mind to build it into a group with an international dimension. I wanted above all to allow the company to develop. But over the years, many steps have been taken and the Altrad group is now extremely solid. It is true that nothing can be taken for granted, but I think we can all be confident for the future. »*

**Mohed Altrad**



BUILDING A SUSTAINABLE FUTURE

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