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S.C. SUPREME COURT

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
KEITH W. PARK, individually and as the Personal Representative of the Estate of ISABELLA PARK,	)	C/A No. 2021-CP-40-02727
	)	In Re:
Plaintiffs,	)	Asbestos Personal Injury Litigation Coordinated Docket
	)	
v.	)	**MOTION TO CLARIFY ORDER APPOINTING A RECEIVER FOR CAPE PLC**
	)	
ARMSTRONG INTERNATIONAL, INC., et al.	)	
	)	
Defendants.	)	

Please take notice that Peter D. Protopapas, in his capacity as Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape"), acting by and through the undersigned counsel, will move as soon as may be heard for an order clarifying the Order Appointing a Receiver for Cape issued by this Court on March 17, 2023. Specifically, the Receiver seeks clarification that the Receiver's Cape litigation to date all has been conducted within the appropriate scope of his appointment. In support of this motion, the Receiver would show the Court as follows:

1. By order dated March 17, 2023 (the "Appointment Order"), this Court appointed the Receiver pursuant to section 15-65-10(4)-(5) of the South Carolina Code and granted him the authority to "fully administer all assets of Cape . . . and take any and all steps necessary to protect the interests of Cape whatever they may be."
2. The Receiver was appointed over Cape because Cape employs a strategy, as in this case, to reject any litigation and potential exposures for injuries caused in the

United States related to their distribution of deadly asbestos in the United States and as such refused to answer the above-captioned complaint.

3. In the fulfillment of his duties, on June 30, 2023, the Receiver initiated a third party action in the South Carolina Court of Common Pleas in *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (the "Third Party Action"), to adjudicate the parties responsible for Cape's historical liabilities and the duties owed by those entities to Cape.
4. On September 1, 2023, Third-Party Defendants ESAB Corporation ("ESAB") filed motions to dismiss the Receiver's Third Party Action. Among the reasons ESAB argued the Third Party Action should be dismissed was that "The Receiver's attempts to marshal assets located outside South Carolina exceed the scope of his authority." Motion at 2.
5. Similarly, Mohed Altrad filed a Motion to Dissolve the Cape PLC Receivership the same day. In it, he argued that "The Order Appointing Receiver, based on its plain language and pursuant to South Carolina law, does not authorize the Receiver to file lawsuits on behalf of a foreign company against other foreign and out-of-state companies." Motion at 9.
6. In an Order dated December 6, 2023, this Court entered an Order denying the Third Party Defendants' Motions to Dismiss and Motions to Dissolve.
7. There have been fourteen (14) interlocutory notices of appeal filed by the third party defendants in *John A. Tibbs v. Asbestos Corporation Limited, et al.*, 2023-CP-40-01759 as well as a series of additional appeals to the Supreme Court launched in

September of 2024.[1] The latest three Petitions mark the continuation of these improper appeals. All of the interlocutory appeals that the appellate courts have considered have been dismissed. Those not yet considered, until recently, have been held in abeyance due to attempts to improperly remove this case.[2]

8. In addition to filing waves of meritless appeals and petitions for certiorari, the third party defendants have stated in no uncertain terms that they will not participate in the underlying case in any way, shape, or form, in a transparent attempt to avoid trial. *See* Ex. B (9/4/2024 letters from Vic Rawl and Todd Carroll). Not content with refusing to participate in the underlying case, the current owners of Cape (i.e., Mohed Altrad and Altrad Investment Authority S.A.S.) have now contrived yet another avenue to avoid the courts in the United States in an effort to further their avoidance of liabilities and exposures by pursuing an injunction against the

[1] *See, e.g.*, Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case Nos. 2003-002006 and 2024-001499), Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case Nos. 2003-002007 and 2024-001497), ESAB Corporation (Appellate Case Nos. 2003-002009 and 2024-001423), Charter Consolidated Ltd. (Appellate Case Nos. 2003-002010 and 2024-001423), and Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002011 and 2024-001423).

[2] *See, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); Appellate Case No. 2024-000524 (Order, May 3, 2024) (denying petition for rehearing from dismissal of second set of appeals of order granting the Receiver's motion to compel discovery responses); Appellate Case Nos. 2024-001063, 2024-001064, 2024-001065 (third set of notices of appeal of the circuit court's interlocutory orders awarding discovery sanctions). All appeals arising out of the *Tibbs* case were held in abeyance for over two months due to an improper removal of the *Tibbs* action to which Appellants consented. The United States District Court for the District of South Carolina remanded the case to the circuit court on August 13, 2024. *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13, 2024). The level of coordination amongst the Third-Party Defendants cannot be overstated. *See also* September 3, 2024, Letter of Jonathan M. Robinson, Appellate Case No. 2024-001423 (in response to Appellants' unsuccessful attempt to delay their Petition for Writ of Certiorari).

Receiver in the United Kingdom. *See* Ex. C (8/30/24 Winston letter). Subsequently, on September 9, 2024, Cape Intermediate Holdings Limited and Cape plc instituted an action in the High Court of Justice Business and Property Courts of England and Wales seeking to enjoin Peter D. Protopapas from fulfilling his court-appointed duties and obligations charged by the Asbestos Docket Chief Judge, South Carolina Chief Justice Jean Hoefer Toal (Active Ret.) on March 16, 2023. These proceedings violate the Receivership Court's Order of Appointment, and the Barton doctrine, which was reaffirmed by the Fourth Circuit in another case involving this very Receiver in another receivership as well as some of the same counsel representing the Altrad defendants. *See Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 360 (4th Cir. 2024).

9. Despite failed efforts in our state and federal trial and appellate courts to overturn the Barton Doctrine and avoid the Receivership Court, on October 30, 2024, Altrad engaged an esteemed former member of the federal judiciary who left the court 16 years ago, and who has not participated in any litigation in the U.S. involving the Receiver, to opine, in an English court, not a U.S. court, on the propriety of the Receivership in the United States. Sadly, as has been the method of operations, it is obvious on the face of document which lists documents reviewed, Altrad failed to disclose to their expert the multiple appeals and opinions authored by sitting state and federal trial and appellate judges which have rejected Altrad's efforts to evade Receivership law in the United States.[3] See Hon William W. Wilkins expert report

[3] The Altrad third party defendants' pursuit of ends over means was also illustrated in its recent filings at the Court of Appeals where they averred that the "Receiver purports to be a receiver over a Jersey company that has no assets in South Carolina, no judgments against it in South Carolina,

for Altrad in which he stated in relevant part, "when commencing any action that would seemingly otherwise be authorized, a state court appointed receiver would need to undertake care to avoid pursuing legal actions where prior encumbrances or adjudications would render such filings as improper, as such conduct would exceed both his court appointed authority, as circumscribed by controlling precedent, as well as the plain language of Rule 66, SCRCP." Ex. A, Report of Hon. William Wilkins, at 6.

The Receiver contends that this Court rejected the Third Party Defendants' arguments when it denied their motions in the December 6, 2023 Order. The Receiver therefore seeks clarification that, pursuant to SCRCP 66, the Receiver's power and authority to fully administer all assets of Cape includes the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape. The Receiver further seeks clarification that the Receiver's litigation activity to date has been conducted within the scope of this Court's Appointment Order.

WHEREFORE, the Receiver prays that this Court grant him an order clarifying the Appointment Order to establish that the Receiver's litigation activity to date has been conducted within the scope of this Court's Appointment Order. The Receiver further request such other relief

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no active claims against it in South Carolina, and that was never served with a shred of paper about any lawsuit in South Carolina," and that the Altrad third party defendants "have no contact with South Carolina and are not subject to personal jurisdiction here." (Appellate Case No. 2024-001063, September 5, 2024 Return to Motion to Dismiss at 3, 4.) However, one needs to look no further than the Altrad Owners Third-Party Defendants' own website to find that these assertions are simply not true. *See* South Carolina contact information at rmdksouthcarolinarentaladmins@altrad.com and "Other branches in USA" at 301 Webb Road Williamston, South Carolina, at www.rmdkwikform.com/us/contact-us/; *see also* "Our History" at https://www.altrad.com/en/our-history.html. *See* Ex. D.

as the Court deems just and proper and reserves the right to supplement this motion with additional memoranda.

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November 1, 2024

EXHIBIT A

BILLY WILKINS LAW, LLC

Expert Report of Hon. William W. Wilkins
October 30, 2024

A. Introduction

I have been instructed by Signature Litigation LLP ("**Signature**"), acting for the Claimants, to provide an expert report on matters relating to South Carolina and US Law.

This report is for the High Court of Justice of England and Wales in the proceedings between the Claimants (1) Cape Intermediate Holdings Limited (2) Cape Plc and the Defendant, Peter D. Protopapas.

I have been asked to provide a report addressing the following questions on South Carolina law (the "**Questions**"):

1. What is the status of a receiver under South Carolina ("**SC**") Law, namely:
   (a) The legal basis on which a receiver over a company can be appointed by the SC Court (including a foreign company not present in the jurisdiction of SC).
   (b) The distinction between the receiver and the Court.
   (c) The different types of receivership.
2. Is the legal authority of a receiver limited to the scope of the receivership order?
3. What duties are owed under SC law by a receiver to the company he represents where there is no judgment for a creditor?

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4. Under SC law, are receivership orders limited to the territory of South Carolina, or can they have extra-territorial effect?

5. What is the Barton Doctrine and how does it operate?

6. What are the legal doctrines which could relate to a party bringing a case in the SC Court which is inconsistent with a case which that party has successfully argued and been determined by the English Court in its favour after a trial and full appeal process?

7. What is the approach of SC law as to whether the pursuit of proceedings ought to be prohibited as abusive, vexatious and unconscionable?

B. Qualifications and experience

I have appended my biography and resume to this Report. I have five decades of experience in the legal, judicial and military fields in South Carolina. I am the Former Chief Judge of the U.S Court of Appeals for the Fourth Circuit, Former U.S District Judge and former Chair of the U.S Sentencing Commission.

I am a native of Greenville, South Carolina and have served my state and profession my entire career. Upon my retirement from the federal bench in 2008, I joined Maynard Nexsen and retired from that Firm on July 1, 2024. I then formed a separate law firm, Billy Wilkins Law, LLC.

C. Assistance

All work in this report has been carried out under my direct supervision and control and as such any opinions and views in this report are my own.

D. Answers to the Questions

1. What is the status of a receiver under South Carolina ("SC") Law, namely:

(a) The legal basis on which a receiver over a company can be appointed by the SC Court (including a foreign company not present in the jurisdiction of SC).

(b) The distinction between the receiver and the Court.

(c) The different types of receivership.[1]

South Carolina law views a state court appointed receiver as, "an executive officer of the Court" appointed by the trial judge "to administer the assets of the estate under the direction of the Court." *In re Fifty-Four First Mortg. Bonds*, 15 S.C. 304, 314 (1881); *see also Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 354 (4th Cir. 2024). In this regard, the South Carolina Supreme Court has held:

> A receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts. As he has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. He is subject only to the Court's direction.

Kirven v. Lawrence, 244 S.C. 572, 580, 137 S.E.2d 764, 768 (1964).

South Carolina decisional law has elsewhere described the role of a receiver as an "arm of the Court—appointed by the Court to receive and preserve the property or fund in litigation, together with the rents, issues and profits, and to apply or dispose of them at the direction of the Court." *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). Such treatment accords with various legal formulations describing the status of receivers in South Carolina's sister jurisdictions. *See, e.g.*, 65 Am. Jur. 2d Receivers § 1 (describing receivers as agents, representatives, arms, fiduciaries, and officers of the appointing court). But, explained in simplest terms, the distinction between a receiver and an appointing Court is one of agent (receiver) and principal (appointing court).

Under South Carolina law, the appointment of a receiver is considered "a drastic remedy, and should be granted only with reluctance and caution." *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (citing *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957)). "[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined." *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887) (internal quotation marks and citation omitted). Such "principles of law" have been noted by the South Carolina Supreme

[1] The answers to subparts (a) through (c) are provided collectively below to promote both efficiency and a cohesive answer.

Court as "firmly established by all of the decisions." *S. Tr. Co. v. Cudd*, 166 S.C. 108, 114, 164 S.E. 428, 430 (1932).

When the circumstances so warrant, South Carolina law nonetheless allows for the appointment of receivers in various contexts. *See, e.g.*, S.C. Code § 6-17-200 (appointment of a receiver due to default upon municipal revenue bonds); *Id.* at § 34-36-60 (appointment of receiver for violating statutes applicable to loan brokers); *Id.* at § 34-3-630 (appointment of FDIC as receiver for failing insured banks). By contrast, South Carolina Code § 15-65-10 (Law. Co-op. 1976) *et seq.* ("Receivership Act") is the statute fundamentally material to answering the question posed. It states:

> A receiver may be appointed by a judge of the circuit court, either in or out of court:
>
> (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;
>
> (2) After judgment, to carry the judgment into effect;
>
> (3) After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;
>
> (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
>
> (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

Id.

Under the Receivership Act, then, the statute's plain and unambiguous language authorizes a South Carolina trial court to appoint a receiver in five enumerated categories. *Id.* The first only applies when a dispute over a specific asset exists prior to the issuance of a judgment in a lawsuit. *Id.* at ¶ 1. The second and third only apply after a judgment issues in a lawsuit. *Id.* at ¶¶ 2-3. The fourth only applies when a corporation has been dissolved or is imminently at risk of insolvency or losing

its corporate status. *Id.* at ¶ 5. Category 5, however, operates as a catchall receptacle embracing all of South Carolina law and existing practice unless specifically otherwise prohibited by statute.

Unfortunately, it is simply not possible to enumerate an exhaustive list of every situation when *law or practice* historically justified a receiver's appointment. That said, illustrative examples include:

- Allegations of fraudulent conveyances on the part of a debtor defendant. *See, e.g., First Carolinas Joint Stock Land Bank v. Knotts*, 191 S.C. 384, 1 S.E.2d 797 (1939); *Virginia-Carolina Chem. Co. v. Hunter*, 97 S.C. 31, 81 S.E. 190, 191 (1914).

- Alleged noncompliance with state environmental and regulatory provisions. *See, e.g., Midlands Utility, Inc. v. South Carolina Dep't of Health & Environmental Control*, 301 S.C. 224, 391 S.E.2d 535 (1989).

- Troubling conduct occurring during a partnership dissolution. *See, e.g., Wrenn v. Wrenn*, 228 S.C. 588, 91 S.E.2d 267 (1956).

- Alleged fraudulent deprivation of assets as between business partners. *See, e.g., Whilden v. Chapman*, 80 S.C. 84, 61 S.E. 249 (1908).

- Troubling conduct in a family court proceeding necessitating a receiver's appointment to assist in dividing marital property. *See, e.g., Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E. 2d 877 (Ct. App. 1992).

See also 21 S.C. Jur. Receivers § 7. A review of reported decisions, albeit a non-exhaustive one, could not readily find an example of a case where a South Carolina trial court appointed a receiver pursuant to category 5 of the Receivership Act, in advance of a judgment's issuance, against a foreign corporation, who had never conducted business, owned assets, or maintained any sort of presence in South Carolina.

In addition to the Receivership Act, South Carolina's Rules of Civil Procedure ("SCRCP") also address the appointment of a receiver. Rule 66, SCRCP, states:

> **(a) Action Where Receiver Appointed.** An action in which a receiver has been appointed shall not be dismissed except by order of the court. The practice in the

> administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the laws of this State. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.
>
> **(b) Powers of Receiver.** In addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor *where it is necessary or proper for him to do so.*

Rule 66, SCRCP (emphasis added).[2] It is noteworthy that when a receiver does take possession of property or undertakes action to protect the same, he or she does so "subject to all valid prior liens, such incumbrances are entitled to protection and to payment out of the property which they cover." *In re Am. Slicing Mach. Co.*, 125 S.C. at 219, 118 S.E. at 305.

No readily apparent reason appears to exist as to why a receiver would not similarly take possession of property subject to the valid and final adjudications of a court of competent jurisdiction to the extent they impacted status of title to property. Accordingly, when commencing any action that would seemingly otherwise be authorized, a state court appointed receiver would need to undertake care to avoid pursuing legal actions where prior encumbrances or adjudications would render such filings as improper, as such conduct would exceed both his court appointed authority, as circumscribed by controlling precedent, as well as the plain language of Rule 66, SCRCP.

2. Is the legal authority of a receiver limited to the scope of the receivership order?

A receiver has no legal authority apart from that bestowed upon him or her by the Court's order of appointment. The South Carolina Supreme Court has held: "It is axiomatic that a Receiver appointed by a Court has no power or authority other than that given him by the order of appointment." *Int'l Shoe Co. v. U. S. Fid. & Guar. Co.*, 186 S.C. at 282, 195 S.E. at 550 ; *see also In re Fifty-Four First Mortg. Bonds*, 15 S.C. at 314 ("The authority of a receiver rests only in the orders of the Court by which he is appointed. By virtue of any general authority as receiver he has

[2] Such language could garner a variety of meanings depending on context and no South Carolina precedent interpreting the same. However, it is safe to say that a Receiver cannot act in a manner contrary to the order of appointment, which, in the first instance, must also fall within the Court's jurisdictional authority to issue relative to its content and mandates.

no right to sue or be sued or defend.") And, as noted above, the South Carolina Supreme Court restated such tenet in the decision of *Kirven v. Lawrence*, 244 S.C. at 580, 137 S.E.2d at 768 where it once again confirmed a receiver; "has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. He is subject only to the Court's direction." *Id.*

Also, South Carolina Rule of Civil Procedure 66(b) states:

> **(b) Powers of Receiver.** In addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, *unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor where it is necessary or proper for him to do so.*

Id. (emphasis added). However, such authority is not viewed as antagonistic but rather incidental to the powers granted by the receivership order and obviously cannot contravene any mandate to the contrary.

3. What duties are owed under SC law by a receiver to the company he represents where there is no judgment for a creditor?

Prior to a judgment's issuance, the appointment of a receiver by a South Carolina Court places a corporation's property in the hands of the Court for the benefit of those ultimately found to be entitled to it. *Stone v. Mincey*, 180 S.C. 317, 185 S.E. 619, 622 (1936); 21 S.C. Jur. Receivers §15; *see also Powell v. Maryland Tr. Co.*, 125 F.2d 260, 271 (4th Cir. 1942) (result "is to put the property from that time into his custody as an officer of the court, for the benefit of the party ultimately proved to be entitled, but not to change the title, or even the right of possession in the property.") The "[p]roperty in the hands of the receiver is in *custodia legis*," although title remains in the name of the corporation. *Int'l. Shoe Co. v. U.S. Fid. & Guar. Co.*, 186 S.C. at 271, 195 S.E. at 550. The scope of the receiver's "general powers, rights, and duties" are defined by the order appointing the receiver, the statutory authority under which such order issued, and the rules of court applicable to receivers. *Hannon v. Mechanics Bldg. & Loan Ass'n of Spartanburg*, 177 S.C. 153, 180 S.E. 873, 876 (1935).

The "general rule in reference" to the duties owed by receivers appointed by South Carolina Courts "is that they shall use such diligence in the management" of receivership assets "as a prudent man would do in relation to his own affairs...." *Id.* Of course, the receiver manages receivership assets as "the arm of the Court," *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 304, and not as an "agent of the corporation," or "of any party to the suit in which the receiver is appointed." Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810.

Despite a lack of agency therewith, a receiver must act to protect the corporation's rights, along with those of "its stockholders and creditors." *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 303; *see also* Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810. It is the receiver's duty "to assert and protect the rights of each of these several classes of persons," as "he is regarded as a trustee for them." *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 304. In this way, South Carolina Courts view receivers as representing "the interests of all of the parties, including the creditors, the shareholders and the corporation itself." Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810.

In summary, receivers, as officers of the Court, shoulder "the burden of standing impartially between all parties concerned, with the further obligation, in so far as they possibly can, to protect the rights of all parties." *Clark Bros. & Co. v. Pou*, 20 F.2d 74, 78 (4th Cir. 1927); *see also* Powers and duties of receivers, 16 Fletcher Cyc. Corp. § 7813 ("As officers of the court, receivers are under the duty to act impartially toward, and protect the rights of, all parties.") Receivers are, therefore, viewed, as occupying a "fiduciary relationship toward the parties in interest, including the creditors and shareholders of the corporation." Representative capacity of receivers—Fiduciary relationship, 16 Fletcher Cyc. Corp. § 7811. And specific duties and powers appear in the receiver's Order of appointment.

4. Under SC law, are receivership orders limited to the territory of South Carolina, or can they have extra-territorial effect?

Receivership orders issued pursuant to the South Carolina receivership statute, codified at S.C. Code §15-65-10 *et seq.* (designated above as, "Receivership Act"), should not garner extraterritorial application or effect.[3] While sparse, if any, South Carolina precedent directly

[3] For purposes of responding to Question 4, the term "extraterritorial" means assets beyond the borders of the State of

addresses the Receivership Act's extraterritorial impacts, by applying controlling precedent evaluating when South Carolina statutes operate extraterritorially, coupled with the statute's plain language, and other persuasive authority, the Receivership Act should not be found to operate extraterritorially. Fundamentally, this is true because the Receivership Act, a unique creature of South Carolina law, nowhere evinces the requisite legislative intent to operate beyond South Carolina's borders.

Both controlling and persuasive authority, in this regard, prove both straightforward and well-established:

> Unless the intention to have a statute operate beyond the limits of the state or country is *clearly expressed or indicated by its language, purpose, subject matter, or history,* no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country enacting it. To the contrary, the presumption is that the statute is intended to have no extraterritorial effect, but to apply only within the territorial jurisdiction of the state or country enacting it. Thus an extraterritorial effect is not to be given statutes by implication.

73 Am.Jur.2d *Statutes* § 250 (emphasis added). In the decision of *Ex Parte First Pennsylvania Banking and Trust Co.*, 247 S.C. 506, 148 S.E.2d 373, 374 (1966), the South Carolina Supreme Court adopted this exact principle (*i.e.*, "... no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived.").[4] Thus, if South Carolina's legislature (*i.e.*, the South Carolina General Assembly) intended for the Receivership Act to operate extraterritorially, it was required to express the same clearly (and would have), but did not. Of note, the South Carolina General Assembly is imputed knowledge of existing precedent when it enacted the Receivership Act (or any law), so the obligation to indicate any extraterritorial application in express terms was known to the legislature at the time of enactment, yet nowhere appears in the statute's language. *See Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586,

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South Carolina and such attempts to take them under control of the receivership, whether by possession, litigation, or otherwise.

[4] *See also Id.* at 508 (citing 50 Am.Jur., *Statutes*, Section 485 ("Thus, the general rule is that no state or nation can, by its laws, directly affect, bind or operate upon property or persons beyond its territorial jurisdiction. A statute which purports to have such operation is invalid.")

602, 762 S.E.2d 705, 714 (2014) ("The General Assembly is presumed to know the law enacting legislation.")[5]

In *GECC v. Renew*, 122 Fed. Appx. 604, 605 (4th Cir. 2004), the 4th Circuit followed the *First Pennsylvania* Court's reasoning, as discussed above, when concluding the South Carolina worker's lien statute could not apply to workers from a South Carolina-based company working in an out-of-state manufacturing facility. The *GECC* Court specifically quoted the language from the *First Pennsylvania* decision holding: "*no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived.*" *Id.* at 607 (emphasis added). The *GECC* Court concluded: "The reasons underlying such a rule are apparent. State legislation that attempts to have effect beyond its territorial limits raises, at the very least, numerous potential constitutional issues." *Id.*

Here, the Receivership Act evinces no legislative intent on the part of the South Carolina General Assembly to operate extraterritorially. Indeed, the exact opposite proves true. The plain and unambiguous language of the Receivership Act limits its application to foreign corporations to "the property within this State." S.C. Code § 15-65-10(4). Other statutory language confirming the same appears in S.C. Code §15-65-100, entitled, "Compensation of receivers of corporate property," which states: "Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the court appointing them." *Id.* As such, not only does the Receivership Act not expressly extend the statute's application extraterritorially, the act's plain language limits its application to property within South Carolina's borders. And, under South Carolina law, "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and [a South Carolina] court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

As related to the above analysis about the Receivership Act's extraterritorial application (or lack thereof), on May 31, 2024, District Judge Quraishi from the United States District Court in New

[5] *Frink v. Nat'l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) "That a receiver has no extraterritorial authority is too well settled to require the citation of authority."); *Pollock v. Carolina Interstate Bldg. & Loan Ass'n*, 48 S.C. 65, 25 S.E. 977 (1896) ("The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.")

Jersey adopted exactly the same reasoning aptly describing the same as "intuitive" and noting, "traditionally, a state court's power is limited to its territorial boundaries." *Protopapas v. Whittaker, Clark & Daniels, Inc.*, No. CV 23-4151 (ZNQ), 2024 WL 2796449, at *6 (D.N.J. May 31, 2024). When reaching the same conclusions as set forth herein, Judge Quraishi correctly observed established precedent constrained South Carolina's court system in relation to both "territorial limits" and the coequal status of other state sovereigns in the United States' federalized system. *Id.* (citing *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 128 (2023) (observing the history of the Anglo-American legal tradition's recognition that "a tribunal's competence was generally constrained only by the 'territorial limits' of the sovereign that created it"); *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (noting states are limited "by their status as coequal sovereigns in a federal system"). Judge Quraishi also correctly pointed out, that mechanisms such as ancillary receiverships exist (and the domestication of judgments for that matter) from state to sister state due to the constraints foreclosing extraterritorial application. Otherwise, such mechanisms would be unnecessary.

In short, the Receivership Act should not apply extraterritorially. Any Court Order predicated upon authority derived from the Receivership Act is, therefore, necessarily also so constrained. *See also* Powers and Duties of Receivers—Extraterritorial Powers, 16 Fletcher Cyc. Corp. § 7824 ("The power of a receiver is coextensive with the jurisdiction of the appointing court. A receiver has no extraterritorial jurisdiction or power of official action.").[6]

5. What is the Barton Doctrine and how does it operate?

The United States Supreme Court first enunciated what United States Courts now call the *Barton* Doctrine in the decision of *Barton v. Barbour*, 104 U.S. 126 (1881). The *Barton* Doctrine generally establishes the following legal tenet: before a Plaintiff can sue a court appointed receiver

[6] Relatedly, for a court order appointing a receiver over a foreign corporation's assets to have effect, a South Carolina Court must also possess personal jurisdiction over that corporation, whether by specific or general jurisdiction, in a manner comporting with Due Process under the Fourteenth Amendment of the United States Constitution. *See, e.g., Sheppard v. Jacksonville Marine Supply, Inc.*, 877 F. Supp. 260, 265 (D.S.C. 1995); *Triplett v. R. M. Wade & Co.*, 261 S.C. 419, 426, 200 S.E.2d 375, 378 (1973). For example, an order appointing a receiver over a foreign corporation that never had assets in South Carolina, never maintained a place of business in South Carolina, never transacted business in South Carolina, and never undertook any action purposefully directed at South Carolina--such that the entity "could reasonably anticipate being haled into Court" in this State--would not adhere to the Due Process needed to support a proper exercise of personal jurisdiction by a South Carolina Court. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005).

for acts committed in the receiver's *official capacity*, the suing party must first obtain leave from the court that appointed the receiver ("Appointing Court" or "Receivership Court"). *Id.*; *see also McDaniel v. Blust*, 668 F.3d 153, 156–58 (4th Cir. 2012). In turn, "To determine whether a complained-of act falls under the *Barton* Doctrine, courts consider the nature of the function" performed by the receiver "during commission of the [challenged] actions." *Lismore Vill. Homeowners' Ass'n, Inc. v. Eastwood Constr., LLC*, No. 6:14-CV-2185-BHH, 2016 WL 3385081, at *7 (D.S.C. June 20, 2016). Under federal law and generally speaking, leave must be obtained when the receiver acts within his or her role of recovering assets for the estate. *Id.*

A review of the facts underpinning the *Barton* decision is helpful. A Virginia state court appointed John Barbour ("Barbour") as receiver for the Washington City, Virginia Midland, and Great Southern Railroad Company ("Railroad"), a Virginia corporation maintaining its assets in Virginia. *Barton v. Barbour*, 104 U.S. at 126. Plaintiff Frances Barton ("Barton") thereafter sued Barbour in his capacity as receiver in the District Court of Columbia (federal) seeking money damages. *Id.* at 127. According to Barton, as receiver, Barbour negligently operated the Railroad causing Plaintiff to sustain grave personal injuries when she was thrown from a sleeping car down a nearby embankment. *Id.* Expressly limiting its holding to the facts of the case, *see id.* at 133, the *Barton* Court found the District Court of Columbia lacked subject matter jurisdiction to hear a lawsuit *seeking a money judgment* against a state court appointed receiver for acts undertaken in his official capacity since the result of such a lawsuit, if successful, threatened to diminish the Virginia property under the receiver's control. *Id.* at 128.

As such, the *Barton* Doctrine arose from a federal holding (*i.e.*, a decision of the United States Supreme Court). But, under a federalism schema such as exists in the United States, federal precedent, even if from the United States Supreme Court, does not necessarily operate as controlling precedent in South Carolina, itself a sovereign, unless certain federal constitutional guarantees (or some other jurisdictional nexus) are somehow implicated by the *Barton* Doctrine's application, which they are not (*e.g.*, certain federal constitutional guarantees, interstate commerce, etc.). *See, e.g., State v. Austin*, 306 S.C. 9, 16, 409 S.E.2d 811, 815 (Ct. App. 1991) ("The principle of federalism envisions two separate and independent judicial systems: federal courts, which construe federal law, and state courts, which construe state law.") Thus, how the *Barton* Doctrine

operates as to a receiver appointed by a South Carolina Court, if at all, compels adherence to any controlling South Carolina decisional law, if any.

Only one South Carolina decision discusses the *Barton* Doctrine as applied to a state court appointed receiver.[7] The South Carolina Supreme Court first analyzed the *Barton* Doctrine in the decision of *Sigwald v. City Bank*, 82 S.C. 382, 64 S.E. 398, 400 (1909). Reciting *Barton*'s holding, the *Sigwald* Court wrote:

> In *Barton v. Barbour*, Receiver, 104 U. S. 126, 26 L. Ed. 672, the Court held that *where the action was to recover specific property in the hands of the receiver*, or a *money judgment against the receiver*, or generally where a judgment in the action would give the claimant some advantage over other claimants upon the assets in the receiver's hands, *it was necessary to obtain leave to sue from the Court appointing the receiver*, and that failure to obtain such leave was jurisdictional, the suit being in the District of Columbia upon a cause of action arising in Virginia *where the receiver was appointed and the property situated.* The distinction between that case and the one at bar is wide. There is considerable conflict among the authorities as to whether the failure to obtain leave to sue a receiver is jurisdictional.

Sigwald v. City Bank, 82 S.C. at 386-87 (emphasis added).

The *Sigwald* Court then proceeded to answer whether a plaintiff's failure to obtain the consent of the Appointing Court would create a "jurisdictional" impediment to the non-receivership court hearing a lawsuit against a receiver as per the *Barton* Doctrine as applied under South Carolina law. Answering in the negative, at least under the facts then at bar, the *Sigwald* Court concluded:

> We do not think the failure to obtain leave to sue the receiver in this case can be regarded a jurisdictional defect, since no assault is made on the receiver's possession, and no attempt is made, which resulting in a judgment, would interfere with or embarrass the administration of the receiver's trust or give any advantage as among distributees.

Id. at 387. Within the holding of *Sigwald*, then, the South Carolina Supreme Court ruled that the existence of subject matter jurisdiction is not negated, under the *Barton* Doctrine, when a lawsuit

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[7] Six months after issuing the holding in *Sigwald*, the South Carolina Supreme Court released the decision of *Huguelet v. Warfield*, 84 S.C. 87, 65 S.E. 985 (1909). Like *Sigwald*, the *Huguelet* decision discusses the holding of *Barton v. Barbour*. However, *Huguelet* related to the appointment of a federal receiver under federal statute and was ultimately decided under the federal statute. As a result, *Huguelet* does not provide meaningful guidance about the application of South Carolina law.

against a receiver does not interfere with the administration of property in the receiver's possession or trust, notwithstanding the lack of authorization by the Receivership Court.

Unfortunately, South Carolina law does not provide any other guidance as to how the *Barton* Doctrine would operate as to a receiver appointed by a South Carolina court. That said, one final point merits discussion. United States Courts uniformly recognize two exceptions to the *Barton* Doctrine. The first exception arises under federal statute (*i.e.*, 28 U.S.C.A. § 959(a)), applies to federal receivers, and would not apply to receivers appointed by state courts. However, the second exception applies uniformly to state and federal appointed receivers alike. Actions brought against a receiver for *ultra vires* actions fall outside of the *Barton* Doctrine and do not compel prior authorization from the appointing court when suing a receiver.[8] *See, e.g., Satterfield v. Malloy*, 700 F.3d 1231 (10th Cir. 2012); *Rosetto v. Murphy*, 733 Fed. Appx. 517 (11th Cir. 2018), cert. denied, 139 S. Ct. 927, 202 L. Ed. 2d 647 (2019); *Ariel Preferred Retail Group, LLC v. CWCapital Asset Management*, 883 F. Supp. 2d 797 (E.D. Mo. 2012). That is to say, a receiver loses the *Barton* Doctrine's protections for actions exceeding the scope of his duties as authorized by the receivership court. *See, e.g., In re Cruz*, 562 B.R. 812 (Bankr. M.D. Fla. 2016); *In re DMW Marine, LLC*, 509 B.R. 497 (Bankr. E.D. Pa. 2014).

6. What are the legal doctrines which could relate to a party bringing a case in the SC Court which is inconsistent with a case which that party has successfully argued and been determined by the English Court in its favour after a trial and full appeal process?

Under South Carolina law, upon a proper showing, the doctrine of judicial estoppel *may* bar a party from adopting a position contrary to what that party asserted in previous litigation. As the South Carolina Supreme Court has approvingly quoted: "It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position." *Zimmerman v. Cent. Union Bank*, 194 S.C. 518, 8 S.E.2d 359, 365 (1940) (citing *Davis v. Wakelee*, 156 U.S. 680, 689, 15 S. Ct. 555, 558, 39 L. Ed. 578 (1895)). Judicial estoppel notably

[8] For purposes of the instant discussion, the term *ultra vires* means actions taken beyond the authority conferred upon the Receiver under the Appointing Order, in contravention of the Appointing Order's mandates, or taken in conformity with the Receivership Order to the extent the Appointing Court lacked jurisdiction to issue the Receivership Order in whole or in part.

does not operate "to protect litigants from allegedly improper or deceitful conduct by their adversaries" but rather "to protect the integrity of courts." *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003).

For judicial estoppel to apply, five elements must exist. They include: (1) two inconsistent positions (as to issues of fact, not law) must be taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013); *see also Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). As an equitable doctrine, judicial estoppel requires "caution" with respect to its application. *See Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1167 (4th Cir. 1982). Separate and apart from the doctrine of judicial estoppel, South Carolina Courts have recognized principles of comity ordinarily should give rise to the recognition of judgments from other sovereigns. *See, e.g., Collins v. Collins*, 219 S.C. 1, 16, 63 S.E.2d 811, 817 (1951).

7. What is the approach of SC law as to whether the pursuit of proceedings ought to be prohibited as abusive, vexatious, and unconscionable?

South Carolina law provides procedural and substantive mechanisms to both deter and foreclose abusive, vexatious, and unconscionable lawsuits before, during, and after their pendency. As an initial matter, Rule 11(a), SCRCP ("Rule 11(a)") states in pertinent part:

> **(a) Signature.** Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated…*The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it*; and that it is not interposed for delay….
>
> *If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may*

> *impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.*

Id. (emphasis added); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (Claims which are not made in good faith are subject to sanction pursuant to Rule 11, SCRCP). Under Rule 11(a), then, an attorney who files a complaint initiating a lawsuit certifies to the Court that *bona fide* grounds exist to support such filing. *Id.* If, notwithstanding this Rule 11(a) certification, the attorney nonetheless commences suit in bad faith, the attorney becomes subject to sanctions from the Court. *Id.* In this way, Rule 11(a) procedurally operates to "deter future litigation abuse" prior to the initiation of abusive, vexatious, and unconscionable lawsuits. *Kovach v. Whitley*, 437 S.C. 261, 265, 878 S.E.2d 863, 865 (2022) (citing *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002).[9]

Additional safeguards arise once litigation begins. If a party's pleading fails to allege claims legally capable of supporting relief, Rule 12(b)(6), SCRCP, affords Defendants a procedural basis to challenge deficient pleadings even before filing an answer. *Id.*; *see, e.g., Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) ("Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action.") Once the lawsuit progresses, Rule 56, SCRCP, thereafter grants litigants an opportunity to seek summary adjudications when the discovery process confirms no disputed issues of material fact exist as to whole claims or defenses, discrete elements of claims or defenses, or other material issues in lawsuits. *Id.*; *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008) ("The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.") As such, Rules 12(b)(6) and 56 create mechanisms for litigants to expedite final disposition of pending lawsuits that are meritless (*e.g.*, abusive, vexatious, and unconscionable cases).

Once litigation ends, S.C. Code § 15-36-10 (the "Frivolous Proceedings Act") furnishes yet another deterrent against lawsuits brought in bad faith in the form of various sanctions against attorneys who pressed such proceedings. The Frivolous Proceedings Act allows the award of

[9] Generally speaking, the same analysis throughout also applies to *pro se* litigants.

sanctions in a variety of circumstances including where lawsuits are brought in bad faith; for purposes of harassment; for delay; or for purposes of asserting frivolous claims. *See* S.C. Code § 15-36-10(C)(1)(a)-(c). Sanctions available for violating the Frivolous Proceedings Act include an award of attorney's fees and costs, fines, and injunctive relief against future frivolous actions or actions in bad faith. *Id.* at § (G)(1)-(3). South Carolina law, therefore, also fashions a post-judgment deterrent and sanction for abusive, vexatious, and unconscionable lawsuits.

Finally, upon a proper evidentiary showing, South Carolina's trial courts can also invoke their equitable powers to "intervene to prevent continued and vexatious litigation." *Ramantanin v. Poulos*, 240 S.C. 13, 25, 124 S.E.2d 611, 617 (1962). Of course, as with the issuance of all injunctive relief, "the power to enjoin…should be exercised with caution and only in a clear case." *Id.*; *see also Thomas v. Fulton*, 260 F. App'x 594, 596 (4th Cir. 2008) (Injunctive relief available to stop, "a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions.") Abusive, vexatious, and unconscionable lawsuits can, therefore, also be abated through resort to injunctive relief independent of the Frivolous Proceedings Act at such time as a litigant can make a proper showing to the presiding court.

E. Literature and other materials relied upon in drafting the Report

I have appended the authorities and statutes, legislation and jurisprudence cited in the Report and relied upon to reach my conclusions.

List of documents

In drafting this Report, I have been provided with the following documents by Signature:

UK Proceedings

The Claimant's Part 8 Claim Form and details of Claim dated 6 September 2024;

Extract of Transcript from Hearing dated 9 October 2024 (pages 36-39);

First Witness Statement of Ran Oren dated 6 September 2024 on behalf of the Claimants;

The Claimant's Skeleton Argument for the application seeking expedition on 9 October 2024;

Adams v Cape Industries Plc [1990] 1 Ch 433.

US Proceedings

Park Claim: The Motion to Appoint the Receiver dated 6 March 2023;

Park Claim: The Receivership Order granted by the Court of South Carolina dated 16 March 2023;

Park Claim: The Complaints dated 8 August 2023, 5 November 2023 and 17 December 2023.

Tibbs Claim: The Complaint dated 5 April 2023;

Tibbs Claim: The Order Denying Receivership Dissolution: 6 December 2023;

The 3P Complaint dated 30 June 2023.

Procedural documents

Civil Procedure Rules ("**CPR**") of England & Wales Part 35 and supporting Practice Direction 35;

Civil Justice Council of England & Wales– Guidance for instructing experts in civil claims ("**CJC Guidance**").

Declarations

I, Hon. William W. Wilkins, declare that:

I understand that my duty included in my providing written reports and giving evidence is to help the Court and that this duty overrides any obligation to the party who has engaged me. I am aware of the requirements of Part 35 of the Civil Procedure Rules and of Practice Direction 35, the protocol for the instruction of experts to give evidence in civil claims. I confirm that I have complied with my duty and shall continue to comply with it.

I have endeavoured to include in my Report those matters which I have knowledge of or of which I have been made aware that might adversely affect the validity of my opinion.

I have indicated the sources of all information I have used.

I have not without forming an independent view included or excluded anything which has been suggested to me by others (in particular my instructing lawyers).

I will notify those instructing me immediately and confirm in writing if for any reason my existing Report requires any correction or qualification.

I confirm that I have not entered into any arrangement where the amount of payment of my fees is in any way dependent on the outcome of the case.

Statement of truth

I confirm that I have made clear which facts and matters referred to in this Report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed _____
Hon. William W. Wilkins

October 30, 2024.

BILLY WILKINS LAW, LLC
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EXHIBIT B

A. VICTOR RAWL, JR.
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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

WOMBLE BOND DICKINSON

M. Todd Carroll
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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

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 Bvld, 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.

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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[1] 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[2]****, 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)

[1] 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.

[2] "Cape" is defined in the Receivership Order as "*Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape AsbestosCompany 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 Bvld, 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 injuncted 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 injuncted 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 injuncted 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 injuncted from litigating as “Cape plc” or CIHL in any legal proceedings in the State of South Carolina, USA or elsewhere.

EXHIBIT D

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BRINGING STRUCTURES TO LIFE

CONTACT US

Our History

2021 — 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

2020 — Acquisition of Adyard (Abu Dabi)

2017 — Acquisition of the Cape group (UK)

2016 — Acquisition of the Prezioso Linjebygg group (France)

2015 — Acquisition of the Hertel group (Netherlands)

2011 — Development focus on the hire and services business in Europe

2006 — Development of the service activity with the takeover of Balliauw (Belgium, France, Netherlands)

1997 — Development of activities in Europe (through the creation of new subsidiaries and targeted acquisitions)

1990 — Strong development of activities on the French territory

1989 — Takeover of Altrad Saint Denis (manufacturer of concrete mixers)

1987 — Start of production of equipment for local authorities

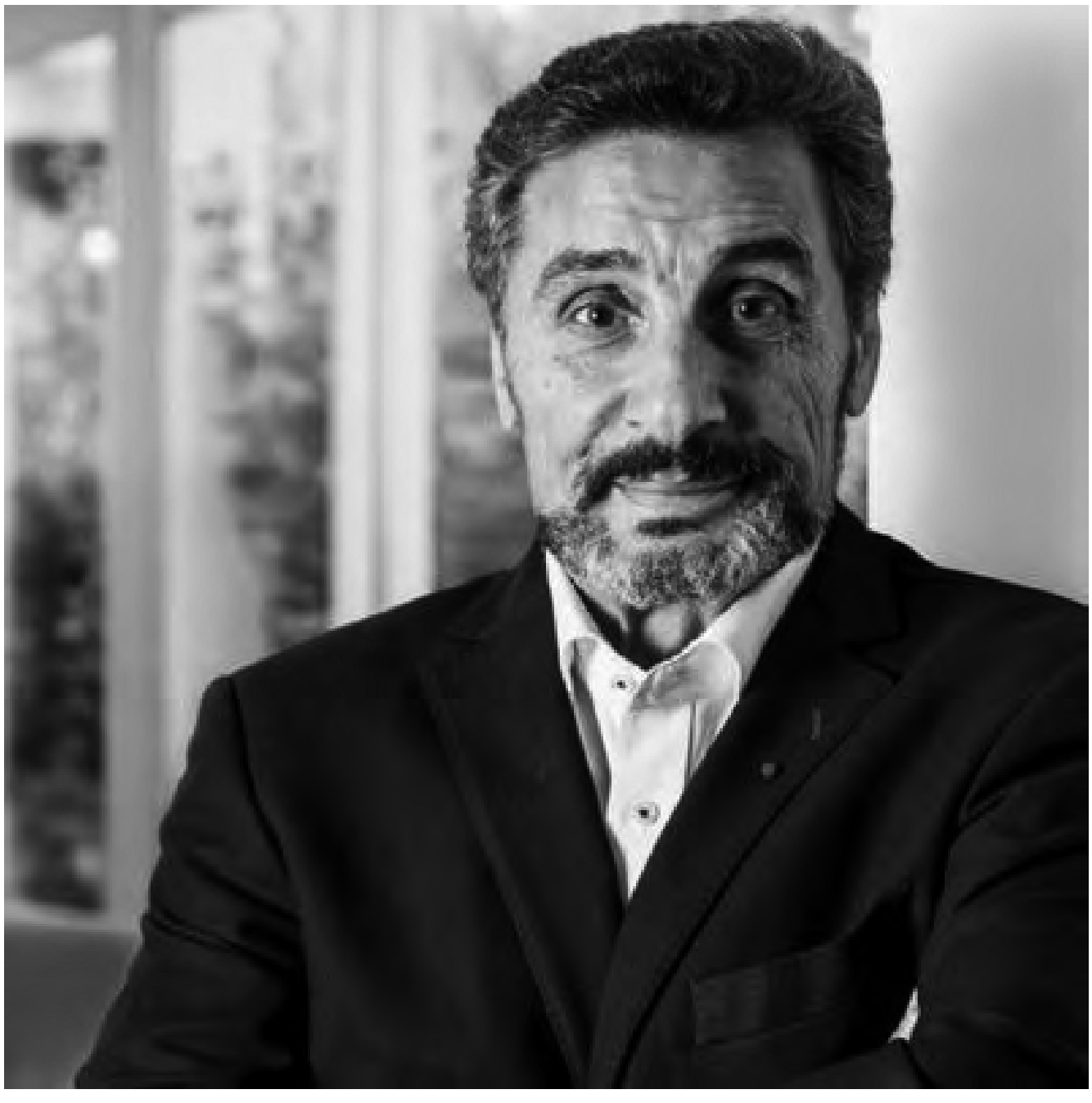
1985 — Creation with the takeover of Mefran (specialised in scaffold manufacturing)

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

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EXHIBIT 2

ELECTRONICALLY FILED - 2024 Nov 05 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4002727

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND KEITH W. PARK, individually and as the Personal Representative of the Estate of ISABELLA PARK, Plaintiffs, v. ARMSTRONG INTERNATIONAL, INC., *et al.*, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C/A No. 2021-CP-40-02727 In Re: Asbestos Personal Injury Litigation Coordinated Docket **ORDER GRANTING RECEIVER'S MOTION TO CLARIFY ORDER APPOINTING A RECEIVER FOR CAPE PLC**

This matter comes before the Court by way of the Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape") Motion to Clarify Order Appointing a Receiver for Cape, issued by this court on March 17, 2023. The Receiver's Motion is hereby GRANTED.

On June 30, 2023, the Receiver initiated a third party action in the South Carolina Court of Common Pleas in *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (the "Third Party Action"), to adjudicate the parties responsible for Cape's historical liabilities and the duties owed by those entities to Cape. Certain Third Party Defendants moved to dissolve the receivership and/or dismiss the Third Party Action on the grounds that the Receiver was not authorized to initiate such actions, and that the Receiver's attempts to marshal assets outside of South Caroline exceeded the scope of his authority. This Court denied those motions in an order dated December 6, 2023. Certain Third Party Defendants continue to disagree with South Carolina and Federal court rulings confirming the application of the Barton Doctrine and the authority of the Receiver and Receivership Court. *See Protopapas v. Zurich Am. Ins. Co*., 2023 WL 2206640, at *2 (D.S.C. Feb. 24, 2023) (Coggins, J.), *appeal dismissed sub nom., Protopapas v. Travelers Cas. & Sur. Co*., 94 F.4th 351 (4th Cir. 2024). *See, e.g., Pipe & Boiler Insulation, Inc. v. Cont'l Ins. Co. et al.*, No.

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3:21-cv-03033-SAL, ECF No. 153, at 4–9 (D.S.C. Mar. 9, 2023) (remanding receivership matter because "the *Barton* doctrine prevents Defendants from removing this matter, filed *by* a Receiver, to federal court," while also considering judicial economy in light of the fact that any "settlement agreement is not final until the *Receivership Court* approves the settlement"); *Protopapas v. Zurich Am. Ins. Co. et al.*, No. 3:21-cv-04086-DCC, ECF No. 180, at 4–6, 10 (D.S.C. Feb. 24, 2023) (remanding receivership case because "*Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver," such that allowing removal "would directly interfere with the exclusive jurisdiction of the receivership court over this dispute"); *see also S. Insulation, Inc. v. OneBeacon Ins. Grp., Ltd.*, No. 3:22-cv-01308-MGL, ECF No. 46, at 4–6 (D.S.C. Nov. 8, 2022) (remanding receivership case on other basis). s*ee also, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); *Childers v. Davis Mechanical Contractors*, et al. No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No. 2024-000337 (Ct. App. Order dated April 12, 2024) (dismissing as not immediately appealable an order denying appellants' motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants' motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024) (same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024) (rejecting appellants' contention that the circuit court's order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal), *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13,

2024) (remanding the case to the circuit court on August 13, 2024 based on the Barton Doctrine).

Recent events, including an expert report by retired jurist William W. Wilkins, warrant further clarification of the Appointment Order. This Order hereby clarifies that the Receiver's Order of Appointment entered on March 17, 2023, which is incorporated herein by reference, including all of the Receiver's duties and protections, extends to the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape. This Order also clarifies that the Receiver's litigation activity to date has been conducted within the scope of this Court's Appointment Order.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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Richland Common Pleas

Case Caption:	Isabella Park , plaintiff, et al vs Armstrong International Inc , defendant, et al
Case Number:	2021CP4002727
Type:	Order/Other

So Ordered

Jean H. Toal