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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Jean H. Toal  
Acting Circuit Court Judge

Supreme Court Case Nos. 2024-000916 and 2024-001499  
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances

Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ..... Defendants,

of which

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,..... Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ..... Third-Party Defendants,

of which

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

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SUPPLEMENT TO THE ALTRAD DEFENDANTS' PETITIONS FOR A WRIT OF  
CERTIORARI

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The Court presently has before it petitions for a writ of certiorari seeking review of the circuit court's orders that: (a) grant a new receivership over Cape Intermediate Holdings Limited, which is a solvent, active U.K. company that has nothing at all to do with the State of South Carolina; (b) modify and continue a receivership over Cape PLC, which is also a solvent, active Bailiwick of Jersey company that has nothing at all to do with the State of South Carolina; and (c) refuse to enjoin the Receiver from carrying on as if he speaks for these companies without any jurisdiction to do so due to the pendency of these appeals.

Respectfully, this situation demands this Court's intervention. The actions of the Receiver, and the rulings of the circuit court, find no support in the law or under the constitution. Despite being instructed by the governing boards of solvent international companies that the Receiver has no authority to speak on their behalf, he continues to take positions in litigation that not only violate the order supposedly appointing him, but that are directly contrary to long-settled law and that are designed to severely prejudice, if not fully cripple, the very companies he has been charged to protect. It is unconscionable.

A foreign court has now specifically enjoined the Receiver from taking any further actions on behalf of CIHL. (Supp. App. 1, Judgment and Order in *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999.) In fact, after the Altrad Defendants completed briefing on their petitions for certiorari in this matter, several additional, material events have taken place that underscore the urgent need for this Court to intervene. This Supplement is designed to update the Court on these latest developments:

1. **Proceedings in the United Kingdom:** As the Court is aware, CIHL (and, nominally, Cape PLC, since the Receiver represented to the circuit court that Cape PLC was simply a “misnomer”) filed suit against the Receiver in the United Kingdom—the forum that actually has jurisdiction over those companies (“U.K. Action”). The U.K. Action addressed the invalidity of the Receiver’s authority over CIHL and Cape PLC, and it also directly challenged the Receiver’s “theory” that CIHL is the “alter ego” of any other entity and are therefore responsible for over a century’s worth of liability for asbestos mined by other companies in South Africa—a “theory” that was thoroughly discredited in an extensive, 140-page opinion from the Court of Appeal of England and Wales after a multiweek trial that spanned from February through July 1988, and an additional multiweek appellate process from April through July 1989. (Supp. App. 104, *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA).)

Proceedings in the U.K. Action began on November 12, 2024, and have now concluded. On November 22, 2024, the High Court of Justice, in the Business and Property Courts of England and Wales, issued its Judgment and Opinion in *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (Supp. App. 1.) It fully details and exposes the injustices that have been perpetrated below, from the initial receivership appointment to present.

The High Court’s Judgment finds, among other things, that the basis on which the receivership appointment was made is “flatly contrary to the findings of the courts in *Adams v. Cape*” (Supp. App. 50; Judgment ¶ 90); the Receiver’s conduct is “positively damaging to the interests of CIHL” (*id.* ¶ 115(c)); the Receiver is committing the tort of “impostor” because he “is purporting to act as an agent of CIHL without authority recognized in English law” (*id.* ¶ 112.); and therefore the High Court enjoined “the receiver, even in South Carolina, from acting or purporting to act for or on behalf of CIHL” (*id.* ¶ 136).

In light of the extensive reasoning in the Judgment, the High Court declared as follows:

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 CIHL (“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 on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraph 6-10 below.
3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr. Protopapas as receiver of CIHL pursuant to the Receivership Order.
4. Mr. Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings (“the 3P Complaint”), 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.
5. Mr. Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A NO. 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

(Supp. App. 2; Order at 2.) Based on these declarations, the High Court ordered as follows:

6. Mr. Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.
7. Mr. Protopapas be restrained 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 CIHL.
8. Mr. Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).

9. Mr. Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).
10. Mr. Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO.2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

(*Id.* at 3.)

The High Court’s extensive reasoning exposes that the illusory nature of these entire proceedings. As a matter of law, the Receiver is enjoined from even proceeding with this litigation. Standing alone, the High Court’s rulings are reason enough for this Court to grant the Altrad Defendants’ petitions for a writ of certiorari, dismiss this case for lack of personal jurisdiction, and immediately dissolve the receivership without any further wasted resources.

2. **Retroactive “Clarification”**: In an apparent kneejerk response to the U.K. Action, the Receiver filed a motion before the circuit court asking it to retroactively bless all of the abusive *ultra vires* behavior in which the Receiver had engaged between his initial appointment and now. The Receiver filed that motion—which he captioned a motion to “clarify”—in the *Park* case from which the original faulty receivership appointment came. (Case No. 2021-CP-40-02727.)

The Receiver filed his motion at the close of business on Friday, November 1, 2024 (Supp. App. 86.) Without a hearing or even waiting the ten days required by Rule 6(d), SCRCPC, the circuit court granted that motion on Tuesday, November 5, 2024, and issued an order that retroactively held—without analysis or explanation—that the Receiver’s vexatious litigation conduct on behalf of CIHL was consistent with the order in *Park* initially creating the receivership over Cape PLC. (Supp. App. 92.) And the circuit court’s order went further to once again modify the purported receivership to “extend[] 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.” (Supp. App. 94 (emphasis added).)

Locke Lord LLP—a third-party defendant in that case with no relevant contacts to South Carolina—timely filed a Rule 59 motion and pointed out that it has a series of dispositive motions that have been pending unresolved and unopposed for over 14 months (including lack of personal jurisdiction and unlawfulness of the receivership), yet the Receiver’s motion to “clarify” was granted in fewer than 2 business days. Locke Lord filed its motion to reconsider on November 15, 2024, and the Rule 59 motion—along with its other motions—remains pending. (Supp. App. 96.)

3. **Summary Judgment Motion:** In another desperate response to the U.K. Action, the Receiver moved for summary judgment on his “alter ego” theory against the Altrad Defendants and others. (Supp. App. 554.) He filed that motion at 9:41 pm on Friday, November 8, 2024, in apparent anticipation of the U.K. Action beginning the following Monday morning. That motion remains pending.

Among other infirmities, this motion is obviously in violation of Rule 205, SCACR, as the validity of the Receiver’s appointment is currently within this Court’s exclusive jurisdiction due to pending appeals. But that motion is also futile, as the very issues and arguments that the Receiver is presenting have already been soundly rejected as a matter of law and fact in *Adams* and reiterated again just last week in *CIHL*. His initial appointment, the modified appointment order to shift the receivership from Cape PLC to a new appointment over CIHL, and the entirety of his litigation position are all based on a discredited fiction.

And, to state the obvious, the Receiver is making arguments to the circuit court—on behalf of entities he purports to represent—that are directly contrary to long-settled law in an apparent effort to create liability for Cape PLC and CIHL, which can only inure to the benefit of the asbestos

plaintiffs and their lawyers who are responsible for the Receiver’s appointment in the first place. This is patently unlawful—the High Court was especially critical of the Receiver’s efforts to do “damag[e] to the interests of CIHL” (Supp. App. 63; U.K. Judgment ¶ 115(c))—and heightens the need for this Court’s immediate intervention.

4. **Additional Attempts to Breach Privilege:** The Court is already aware that the Receiver has sued Cape PLC’s and CIHL’s lawyers—Winston & Strawn, LLP—in Richland County and seeks, among other things, a declaration that Winston & Strawn cannot actually represent its clients, depriving Cape PLC and CIHL of their counsel of choice. (Case No. 2024-CP-40-05397.) And, as referenced above, the Court is already aware that the Receiver has sued Locke Lord LLP in an attempt to access its privileged client materials. (Case No. 2021-CP-40-02727.)

After briefing on the Altrad Defendants’ certiorari petitions closed, the Receiver amazingly seeks to invade yet another attorney-client relationship. In the proceedings below, the Receiver has now filed a motion to compel against Herbert Smith Freehills, LLP—a law firm that currently represents several of the putative third-party defendants in this case—demanding the entirety of that firm’s “client files related to its prior representation of Cape.” (Supp. App. 635, 663, Motion to Compel & Ex. 6 (filed Nov. 18, 2024).)

For its part, Herbert Smith Freehills objected to the Receiver’s attempts to breach the attorney-client privilege due to (1) ethical rules for the Code of Conduct for Solicitors, as administered by the Solicitors Regulation Authority of England and Wales, which require that firm to maintain the confidences of its clients; and (2) “substantial doubt as to whether the Receiver has the power under the laws of England and Wales to request client documents from our files.” (Supp. App. 667–668.) The Receiver’s motion to invade that attorney-client relationship remains pending.

5. **New Lawsuit & Masquerading as Cape’s Counsel:** On November 12, 2024, the plaintiffs’ lawyers responsible for the initial Cape PLC receivership appointment filed a new lawsuit in Richland County on behalf of asbestos plaintiffs against the Altrad Defendants, Cape PLC, and virtually all of the other third-party defendants from this case. (Case No. 2024-CP-40-06639.)

This newest complaint is little more than a cut-and-paste of the Receiver’s third-party complaint in this case. (Supp. App. 679.) It, too, is based on the falsehood that the various defendants are the “alter ego” of NAAC and of each other—a theory that was soundly rejected as a matter of law and fact nearly 35 years ago in *Adams* after months of trials and appeals, soundly rejected again last week in the U.K. Action, and does not pass even a basic Rule 11 analysis.

Equally concerning, though, is that Mr. Protopapas purported to accept service of this newest lawsuit “**as attorney for** above-named Defendant CAPE PLC.” (Supp. App. 760 (emphasis added).) He did that just four hours after the summons and complaint were filed. And, stunningly, he purports to be the “attorney for” Cape PLC just weeks after being sent a letter from both Cape PLC and CIHL that explicitly instructed: “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.” (Supp. App. 488.)

It is indefensible for a lawyer to claim to serve as counsel for an active, international company (or companies) in litigation after being specifically told by that same active, international company (or companies) that he must “cease and desist” from purporting to act on the company’s (or companies’) behalf. It is likewise indefensible for a lawyer to purport to accept service a lawsuit on behalf of a company (or companies) for which he has “no authority” to represent in the first

place. And Mr. Protopapas has now been enjoined by a court with jurisdiction over CIHL from purporting to speak for that company, including in this new case. (Supp. App. 3; U.K. Order ¶ 10.)

6. **Writ of Prohibition in ACL:** Cape PLC and CIHL are not the only active international companies that have nothing to do with South Carolina, yet for which the circuit court has appointed a receiver. Asbestos Corporation Limited and Atlas Turner, Inc., are both active Canadian companies that have been subjected to this same receivership scheme, and the Court is currently reviewing the impropriety of those appointments in Appellate Case No. 2023-001461.

On November 18, 2024, Certain Underwriters at Lloyd’s, London filed a petition for a writ of prohibition in this Court’s original jurisdiction against both Mr. Protopapas, in his capacity as ACL’s receiver, and against Judge Toal. (Supp. App. 761.) In that filing, Lloyd’s echoes many of the same statutory and constitutional arguments regarding the unlawfulness of receivership appointments that stretch beyond the borders of South Carolina that the Altrad Defendants are presenting in this case. And it echoes the same urgency for this Court’s intervention that the Altrad Defendants have urged in this case.

The fact that the same issues involving unlawful receiverships over active international companies are coming to a head before the Court in multiple cases through multiple paths—the Lloyd’s petition is for an original-jurisdiction writ, the ACL and Atlas Turner appeals are before the Court through Rule 204 certification from the Court of Appeals, and the Altrad Defendants are seeking certiorari through Rule 242—reinforces that there are “special and important reasons” for the Court to exercise its authority and grant the Altrad Defendants’ certiorari petitions. Rule 242(b), SCACR.

\* \* \* \* \*

For the reasons stated in the Altrad Defendants' briefing on their petitions for a writ of certiorari, as well as those discussed above, the Altrad Defendants respectfully request the Court grant those petitions. The Receiver has no authority to act, and this case should be over.

Respectfully submitted,

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