

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

S.C. SUPREME COURT

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916

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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation;

Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

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.; Anglo American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (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, Altrad Investment Authority SAS, Arranco US, LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

**MOTION TO STRIKE PETITIONERS' SUPPLEMENTS TO
PETITIONS FOR WRIT OF CERTIORARI AND SUPPLEMENTAL APPENDIX**

Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape

Intermediate Holdings Ltd. (the “Receiver”), hereby moves this Court to strike the Altrad Defendants’ November 24, 2024 Supplement to the Petitions for A Writ of Certiorari and Supplemental Appendix (Volume I and II) filed in Appellate Case Nos. 2024-000916 and 2024-001499 and the Charter Defendants’ November 27, 2024 Supplement to the Petitions for A Writ of Certiorari filed in Appellate Case Nos. 2024-000916 and 2024-001423.¹

The above-referenced matters involve direct appeals of the circuit court’s December 6, 2023 order denying motions to dismiss and dissolve the receivership (Appellate Case Nos. 2024-001423 and 2024-001499) and March 12, 2024 order granting the Receiver’s motions to compel discovery (Appellate Case No. 2024-000916). The Court of Appeals dismissed each appeal as interlocutory and not immediately appealable and denied rehearing. Thereafter, Petitioners filed petitions seeking writs of certiorari from this Court. The Receiver responded to the petitions accordingly, and Petitioners filed replies. These petitions have been fully briefed and under consideration by this Court for months—the earliest since June 24, 2024, and the latest since October 10, 2024.

Now, Petitioners have filed “supplements” to their petitions and submitted 761 pages of additional material that was never presented to the circuit court nor the Court of Appeals in connection with the underlying orders or appeals. In fact, the documents submitted could not have been considered by the circuit court nor the Court of Appeals because the documents are from November 2024, well after the issuance of the orders involved in these appeals. It is improper for Petitioners to raise new arguments and submit documents for the first time to this Court. These are direct appeals from two orders of the circuit court. The question before the Court is narrow—whether the Court of Appeals properly found the orders are interlocutory and not immediately

¹ This Motion is being filed by me, Peter D. Protopapas, as the Receiver for Cape. I use the third person in this Report for formality and ease of reading.

appealable. The arguments and documents Petitioners have submitted are outside of the static record in this case and should not be considered. *See* Rule 242(e), SCACR (directing an appendix be filed with a petition for writ of certiorari that includes the record on appeal, appellate briefs, the ruling of the Court of Appeals, the petition for rehearing, and, if the Court of Appeals dismissed an appeal for procedural or other reasons, any briefing on the motion to dismiss); Rule 210, SCACR (“The Record shall not. . . include matter which was not presented to the lower court or tribunal.”); *Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006) (“To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court.”).

Additionally, the South Carolina Appellate Court Rules do not allow a party to supplement a petition for a writ of certiorari. Rule 242 of the South Carolina Appellate Court Rules governs certiorari issued by this Court to review a final decision of the Court of Appeals and requires the petition to be filed within thirty days following the denial of rehearing by the Court of Appeals. The rule allows for a return to be filed by the respondents and a reply to be filed by the petitioners. It does not allow for a supplemental petition. Petitioners have not requested leave of this Court to file any supplement, and a supplemental petition would be untimely. The “supplements” are also not appropriate as supplemental authority under Rule 208(b)(7) of the South Carolina Appellate Court Rules as this rule only allows for citation to “pertinent and significant authorities . . . without argument.” In the supplements, Petitioners attempt to inform the Court—by way of eleven pages of argument and 761 pages of new documents—of “events” that have taken place after the issuance of the orders on appeal to persuade the Court to “intervene.”² (Altrad Supp. Pet. at p. 3.) This is

² Petitioners’ push for intervention is more akin to a request for an emergency writ in the original jurisdiction of this Court. However, this is a petition for a writ of certiorari seeking review of the decision by the Court of Appeals to dismiss three appeals as interlocutory.

not appropriate under Rule 208(b)(7). The purported supplemental appendix is also not in accordance with Rule 212(b) of the South Carolina Appellate Court Rules which only allows a party to supplement the record on appeal by filing a supplemental appendix “[w]ith the written consent of all attorneys of record” or leave of court.³

Even if supplementing a petition for writ of certiorari and submitting new material for the first time to this Court were somehow procedurally proper, the Court should strike the material as irrelevant and not binding on this Court or courts in South Carolina. Petitioners’ supplements attach an injunction issued by a court in the United Kingdom against Peter D. Protopapas on November 22, 2024, purporting to enjoin Mr. Protopapas, individually, from taking any action on behalf of Cape Intermediate Holdings Limited (“CIHL”) in England, Wales, South Carolina, and worldwide. At the unilateral insistence of Altrad-owned CIHL, the English court purports to invade the province of the United States’ legal system to overturn the circuit court’s appointment order and direct the Receiver to shirk his court-ordered duties and obligations.

In addition to the Receiver, the English order purports to prevent the attorneys from continuing to represent the Receiver and the South Carolina courts, including this Court, from acting on any matters related to the receivership. Although not included in Petitioners’ filing, the English order served on the Receiver and its counsel was accompanied by a Penal Notice, which states:

IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE

³ And, still, the supplemental materials must still be proper for inclusion in the record on appeal according to the rules.

**HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED,
FINED OR HAVE THEIR ASSETS SEIZED.**

Threatening criminal prosecution and imprisonment to anyone who dares take action anywhere in the world involving litigation with a South Carolina Receiver that has, thus far, passed both state and federal scrutiny is violative of the integrity and ethics of the American judicial system and practice of law. Respectfully, the High Court of Justice in England and Wales cannot enjoin and jail members of the Federal and State Bench, its lawyers, or officers for enforcing United States and South Carolina law.

The purported injunction has not been recognized by any court in South Carolina nor the United States, and it should not be because the English court did not have jurisdiction over the Receiver, Mr. Protopapas individually, nor the receivership itself. The injunction is in direct contravention of the orders of the South Carolina courts, the United States District Court, United States Fourth Circuit Court of Appeals, and the United States Supreme Court under the doctrine articulated in *Barton v. Barbour*, 104 U.S. 126 (1881).⁴ Under the *Barton* doctrine, the state court that appoints the receiver maintains exclusive jurisdiction over all claims filed by and against that

⁴ As noted in the Receiver's Report, Womble Bond Dickson and its attorneys, which have thus far avoided sanctions for their improper appeals and litigation tactics, are the same counsel that unsuccessfully challenged the Barton Doctrine in the Fourth Circuit Court of Appeals which confirmed that the Receiver may not sue or sued in a court other than the exclusive jurisdiction of the Receiver court. *See Protopapas v. Travelers Casualty & Surety Co.*, 94 F.4th 351 (4th Cir. 2024) ("Exercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an 'arm,' or 'executive' of the state-receivership court, would infringe on the state court's control over the receivership assets—its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction, and indeed we have confirmed as much" (*Id.* at 358)). Womble Dickson Bond also sought certification of the appeal of an Order Denying Motion to Dismiss or Dissolve a Receivership under the guise a decision would provide guidance to future cases, including the present case.. *See Childers v. Davis Mechanical Contractors, Inc.*, No. 2024-000005 (S.C.S.C. March 27, 2024) ("We grant the motion for certification and motion for joiner, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.").

receiver—subject only to the state court’s own waiver of that exclusive jurisdiction. *McDaniel v. Blust*, 668 F.3d 153, 157 (4th Cir. 2012).

Further, the Receiver, as an officer of the Court, is entitled to immunity for carrying out the orders of the appointing court. *See Bey v. Seymour*, No. CV 3:14-2858-SB-BM, 2014 WL 11531783, at *1 (D.S.C. Nov. 6, 2014), *aff’d sub nom. El Bey v. Seymour*, 591 F. App’x 241 (4th Cir. 2015). As found by the circuit court in the November 5, 2024 *Park* Order, the Receiver’s actions have been conducted within the scope of the Appointment Order.⁵ (Altrad Supp. App. pp. 92–95.) As explained by the First Circuit,

At the very least, a receiver who faithfully and carefully carries out the orders of his appointing judge must share the judge’s absolute immunity. To deny him this immunity would seriously encroach on the judicial immunity already recognized by the Supreme Court. . . . It would make the receiver a lightning rod for harassing litigation aimed at judicial orders. In addition to the unfairness of sparing the judge who gives an order while punishing the receiver who obeys it, a fear of bringing down litigation on the receiver might color a court’s judgment in some cases; and if the court ignores the danger of harassing suits, tensions between receiver and judge seem inevitable. Other federal courts have reached a similar conclusion.

Kermit Const. Corp. v. Banco Credito Y Ahorro Ponceno, 547 F.2d 1, 3 (1st Cir. 1976). The UK litigation, the resulting purported injunction, and the submission of the documents to this Court are irregular attempts to harass the Receiver in an effort to collaterally attack this state’s judicial orders after nearly a year of failed successive appeals and a failed removal to the South Carolina

⁵ Yesterday afternoon, Petitioners filed an appeal in the *Tibbs* case of the circuit court’s November 5, 2024 order issued in *Park v. Armstrong International, Inc.*, Civil Action No. 2021-CP-40-02727. *See* December 5, 2024 Notices of Appeal, Appellate Case No. 2024-002060. Petitioners admit in the notices of appeal that they are not parties to the *Park* case and that the order was issued in the *Park* case, not the *Tibbs* case. However, Petitioners have attempted to appeal the *Park* order using the *Tibbs* caption regardless of the appellate court rules. This marks the fourteenth appeal from the *Tibbs* case pending before our appellate courts. Petitioners have appealed every order issued by the circuit court, and those appeals, thus far, have been dismissed by the Court of Appeals.

District Court. The Court should strike the filings and reject Petitioners' attempts to utilize the unilateral foreign injunction to supersede and shut down a legitimate state-court receivership.

Accordingly, the Receiver respectfully requests the Court strike the supplements to the petitions for a writ of certiorari and the supplemental appendix as both procedurally and substantively improper. For the Court's information, the Receiver attaches a copy of the report he is simultaneously filing with the circuit court.

Respectfully Submitted,

By: s/ Peter D. Protopapas
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Receiver
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This 6th Day of December, 2024