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Dec 13 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2024-001499

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.; 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

Petitioners.

**EMERGENCY MOTION FOR SUPERSEDEAS TO PROTECT AND ENFORCE
JURISDICTION AND FOR TEMPORARY RESTRAINING ORDER**

This appeal is before the Court on a Petition for Writ of Certiorari submitted on September 11, 2024.¹ The Petition has been fully briefed.² On November 25, 2024, Petitioners’ counsel Todd Carroll of Womble Bond Dickson filed a “Supplement” on behalf of Petitioners notifying the Court that: “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.) p. 2 of Supplement To The Altrad Defendants’ Petitions For A Writ Of Certiorari (hereinafter “Supplement”). In addition to the Supplement, Petitioners, by and through UK counsel, Signature Litigation, LLP, served Penal Notices on the Receiver and his attorneys threatening to imprison, fine and seize assets if the Receiver takes any action in the Courts of South Carolina. Ex. 01, November 22nd Penal Notice. The Penal Notices threaten to imprison, fine, and seize the assets of any person who knows of the order and permits the Receiver to “violate” the injunction order, which would include the Receivership Court and the Justices of this Court for exercising jurisdiction over the Cape Receivership and pending appeals.

The Receiver moved to strike the “Supplement” on December 6, 2024.³ As a result of the Receiver’s filing, the Receiver received an additional letter from Signature Litigation, LLP stating that the filing of the Motion to Strike was “in direct contravention of the Order the High Court . .

¹ There are related Petitions before the Court in Appellate Case Nos. 2024-001423 and 2024-000916. These are 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), and the subsequent orders of the Court of Appeals finding the appeals are interlocutory.

² This motion is being submitted by me, Peter D. Protopapas, as the Receiver for Cape. I use the third person in this Report for formality and ease of reading.

³ Additionally, counsel for the Receiver, Gallivan White and Boyd, filed expert disclosures pursuant to a scheduling Order which led to additional threats by Petitioners’ UK attorneys.

. we have already drawn your attention to the Penal Notice . . . which makes it clear that if you disobey the Order you may be held in contempt of court and may be imprisoned, fined, or have your assets seized.” See Ex 02, Dec. 10th Letter. The next day on December 11, 2024, Signature Litigation LLP sent a second Penal Notice, notifying the Receiver and his attorneys that by following the South Carolina Appellate Court Rules and participating in the pending appeals, he had been reported to the UK Court for contempt proceedings and criminal sanction. Ex. 03, December 11th Letter and attachments omitting the 400 page RO3 exhibit. In other words, Altrad has filed a Petition for Certiorari and is simultaneously moving—through its subsidiary—to have the Receiver and anyone who assists him criminally prosecuted if they oppose the Petition. The mere participation of the Receiver in the appeals filed by Mr. Carroll on behalf of Altrad in this Court, and in other litigation currently pending in South Carolina and elsewhere in the United States, is being weaponized by Altrad and used to threaten the Receiver and his attorneys with imprisonment, fines, and seizure of assets. Thus, Altrad seeks to intimidate a ruling in its favor with threats of punitive and penal consequences and by usurping the jurisdiction of this Court.

Upon application of the Altrad Petitioners’ agents, a hearing took place in the UK today, December 13, 2024, as a result of Altrad’s disagreement with the Receiver’s filings in this Court, the circuit court, and the federal court. The Altrad Group/Atrad Investment Authority S.A.S, who is represented by South Carolina attorney Todd Carroll, is headed by Founder and President Mohed Altrad (also a Petitioner here) and by joint-Chief Executive Officers Jan Vanderstraeten and Ran Oren. Altrad CEO Ran Oren serves as the sole Director of Cape Intermediate Holdings Limited and Director of Cape, plc (“the Cape UK entities”). The Altrad Group acquired the Cape UK entities in 2017. The Altrad Group, by and through their subsidiaries—the Cape UK entities—and counsel Signature Litigation, LLP, initiated the English suit to obtain the purported injunction

order and has now filed the UK documents and bar orders in this Court by and through its South Carolina counsel, Todd Carroll and Womble Bond.

In short, following several unsuccessful appellate rulings and a failed removal to the federal court in the United States, Petitioners have now gone to the UK—while the appeals they launched in the US are still pending—and obtained an UK injunction which threatens to imprison, fine and seize assets of the Receiver **and his counsel or anyone else who “knows of the order”** if they participate in this appeal or take any action to fulfill their obligations to the Receiver court or their ethical obligations as counsel to their clients.⁴

In light of the egregious and emergent nature of the actions by Petitioners and their counsel, both in the US and UK, 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 on an emergency basis to issue a supersedeas to protect and enforce the Court’s jurisdiction and a temporary restraining order against Petitioners enjoining Petitioners, their officers, directors, representatives, counsel, and agents from taking any action attempting to prevent the Receiver from fulfilling his court-appointed duties and participating in litigation in this Court and other courts in South Carolina and the United States.

The Receiver files this motion on an emergency basis given proceedings that occurred in the United Kingdom today, December 13, 2024, initiated by the Altrad-owned CIHL, at the

⁴ Section 16-9-340 - Intimidation of court officials, jurors or witnesses **(A)** It is unlawful for a person by threat or force to:**(1)** intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or**(2)** destroy, impede, or attempt to obstruct or impede the administration of justice in any court.**(B)** A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

direction of the Altrad Petitioner's CEO Ran Oren, to hold the Receiver in contempt of the purported injunction order issued by the English court on November 22, 2024. The Receiver received the attached letter from Signature Litigation, LLP and Order of the English Court following the December 13 hearing. The Order declares that the Receiver's November 27th filing of expert disclosures, and the December 6, 2024 Receiver's motion, filed in this Court are "without authority." Ex. 04, December 13th, 2024 Letter and Order. It is clear from today's proceedings that the Altrad Petitioners will continue to apply for relief with the English Court each time the Receiver participates in this appeal. They have indicated their intent to seek to hold the Receiver in contempt for the fulfillment of his court-appointed duties and participation in these proceedings in South Carolina.

Threatening foreign 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. 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 Altrad Petitioners, by and through their South Carolina counsel, attempt to have this Court recognize the UK injunction order outside of the proper avenues by filing the order in an improper supplement to this Court. 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). Under the *Barton* doctrine, the state court that appoints the receiver maintains exclusive jurisdiction over all claims filed by and against that 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. Ex. 05, March 6, 2023 Appointment Order; Ex 06, November 5, 2024 Clarification Order. 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 District Court. The Court should grant this Motion in order to protect and enforce its jurisdiction and enjoin Petitioners from attempting to utilize the unilateral foreign injunction to supersede and shut down a legitimate state-court receivership.

The Receiver requests the Court issue an emergency order granting this motion without briefing in order to enforce and preserve the jurisdiction of this Court, pursuant to Rule 241(c)-(d) of the South Carolina Appellate Court Rules and set a briefing schedule on the motion. Accordingly, the Receiver requests an order of this Court:

1. Protecting and enforcing this Court's jurisdiction over the pending appeals;
2. Confirming the South Carolina courts' jurisdiction over the Cape Receivership; and
3. Directing Petitioners and its representatives, officers, agents, directors, and counsel to immediately stop (1) attempting to prevent the Receiver from fulfilling his court-appointed obligations and duties; (2) interfering with the Receiver's participation in litigation in this state's appellate courts, the circuit court, and all courts in the United States; and (3) interfering with the Receiver's ability to obtain and utilize legal counsel in connection with his court-appointed duties.

By signature of the Receiver below, he verified this request for a supersedeas.

Respectfully Submitted,

s/ Peter D. Protopapas

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The Receiver

December 13, 2024