THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Dec 16 2024

S.C. 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.

MEMORANDUM IN OPPOSITION TO THE RECEIVER'S MOTION TO STRIKE

The Court Can Consider Materials Informing it About the Status of the Litigation

The Receiver's desire for the Court to remain oblivious to what's happening in this case and in relation to the entity(ies) purportedly in a prejudgment receivership—all in the name of misplaced "issue preservation" arguments—should be rejected.[1]

The Altrad Defendants have two petitions for certiorari pending—Appellate Case Nos. 2024-000916 and 2024-001499—and two more filed contemporaneously herewith, all arising from this single case. The first involves an appeal of a circuit court order that appoints a prejudgment receiver over Cape Intermediate Holdings Limited (CIHL) in this case, and that also modifies and then continues a prior prejudgment receivership appointment entered in a different circuit court case over Cape PLC. That order is appealable as a matter of right, as South Carolina Code § 14-3-330(4) specifically authorizes an appeal of an "interlocutory order" "granting, continuing, modifying, or refusing the appointment of a receiver."

The second involves the trial court's refusal to enjoin activity by the purported Receiver while the appointment/modification/continuation order was pending on appeal. Rule 205, SCACR, vests "exclusive jurisdiction" in the appellate courts over all "matters" affected by an appeal. That long-settled point of South Carolina law should have enjoined the Receiver from undertaking any further activity the moment the Altrad Defendants (and other third-party defendants) appealed the

[1] Importantly, the Receiver has no standing to file anything. A court with jurisdiction over the English entity on whose behalf the Receiver purports to speak has held that the Receiver is acting *ultra vires*, as that English company has no contact with South Carolina.

appointment order. But the circuit court refused to issue that required-by-law injunction, a decision that is also immediately appealable under Section 14-3-330(4).

Critically, the circuit court's refusal to issue an injunction required by Rule 205 as a matter of jurisdictional law has allowed the rest of this situation to proliferate to its current status. The purported Receiver has used the boundless platform provided by the circuit court to crusade against the third-party defendants—*none of which are subject to personal jurisdiction in South Carolina*. Those efforts include, *inter alia*:

The Receiver is asserting allegations and claims—against the Altrad Defendants and others—that were thoroughly discredited following multiweek trials and appeals decades ago in *Adams*. (Supp. App. 104–483.)

The Receiver is suing numerous law firms with the stated goal of chilling advocacy and invading the attorney-client privilege held by CIHL and Cape PLC. (Altrad Defs.' Supp. at 8.)

The Receiver harassed Chief Judge Wilkins with a broad subpoena when the former jurist simply provided the High Court of Justice of England and Wales with a neutral explanation of South Carolina law regarding receiverships. (Supp. App. 46–47.) The English court described this harassment as "intimidatory." (*Id.*)

And, most recently, the Receiver claims to be the attorney—not a receiver, but the actual attorney of record—for Cape PLC in tort litigation filed in Richland County despite being told directly by Cape's directors that he has "no authority" to speak for it. (*Compare* Supp. App. 488 ("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." (Aug. 30, 2024)), *with* Supp. App. 760 (claiming to accept service of an Asbestos Docket case "as attorney for above-named Defendant CAPE PLC" (Nov. 12, 2024)).)

The Court needs to be aware of these recent happenings so that it can properly assess under Rule 242(b), SCACR, whether there are "special and important reasons" to exercise its discretion and grant certiorari review. Undoubtedly there are.

This whole receivership program runs contrary to South Carolina law, United States law, and—as recently explained by the High Court of Justice of England and Wales—international law. Worse, it has no legitimate nexus to South Carolina. The English entity in receivership has nothing to do with South Carolina. The third-party defendants also have nothing to do with South Carolina. There is no property in South Carolina that could possibly be subject to any receivership.

The only entity involved in this litigation who is not a stranger to South Carolina is the Receiver himself—but, as a putative receiver, the Receiver has no independent claim to anything. He can only serve a limited role associated with marshaling assets located in South Carolina to satisfy debts owed in South Carolina. But there no such assets, and there are no such debts.

It is wrong to suggest that the Court must put blinders on when assessing a certiorari request and pretend to be ignorant of the unauthorized activities in which the Receiver is engaging. The materials discussed in the Supplement and in the Supplemental Appendix make it obvious why there are "special and important reasons" for the Court to intervene in this matter under Rule 242: a South Carolina trial court has attempted to authorize a South Carolina lawyer to speak for European companies that have nothing to do with South Carolina, and to press claims that not only go against those companies' interests, but that were forcefully rejected over 30 years ago after extensive, heavily-contested trials and appeals that have now been reaffirmed. Truly, this case has no analog in any known jurisprudence, and there are no circumstances under which this receivership—again, which is attempting to seize property held by an English company that has no contact with, no judgments in, and no debts owed in South Carolina—could be proper.

The Court Can Take Judicial Notice of These Public Records

The Altrad Defendants' Supplement did not "raise new arguments," as the Receiver mistakenly asserts on Page 3 of the motion to strike, nor did the Altrad Defendants accompany their supplemental materials with an argument that these new documents should somehow change the merits of this appeal. While the information contained in the Supplemental Appendix certainly confirms that the receivership appointment was illegitimate and without authority from the outset, the Court can easily reach that conclusion without considering the Supplemental Appendix.

Those supplemental materials, however, can and should be considered as part of the Court's analysis as to whether it should grant the certiorari petitions. They are already available in the public record—the Supplemental Appendix only contained filings made in the circuit court, an order and judgment from an English court, and a filing in the Supreme Court's original jurisdiction—and they are ripe for judicial notice even if the Altrad Defendants had not aggregated them for the Court. *See* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are "not subject to reasonable dispute"); *id.* Rule 201(d) ("A court shall take judicial notice if requested by a party and supplied with the necessary information."); *id.* Rule 201(g) ("Judicial notice may be taken at any stage of the proceeding."); *State v. Squires*, 311 S.C. 11, 15, 426 S.E.2d 738, 740 (1992) (taking judicial notice "that the infrared spectroscopy process utilized by [an infrared breath testing device] has gained general acceptance in the scientific community").

The Court Should Disregard the Receiver's Incorrect Statements

The Receiver's motion to strike and the "report" he filed with the circuit court and attached to his motion to strike are riddled with misleading statements that the Court should not credit. So that the Court does not mistake the Altrad Defendants' silence for agreement, they address some of the more obvious ones below:

- Nothing in the U.K. has happened "unilaterally." Through his motion and "report," the Receiver claims that the order and judgment from the English proceedings—which explain in great detail why a putative receivership over English and Jersey companies that have nothing to do with South Carolina will not be recognized—happened "unilaterally." This is untrue.

The English proceedings were served on the Receiver. In response, the Receiver "slammed the door" in the process server's face "and told me not to come back, and that if I did he was going to put me on trespassing notice." (Supp. App. 529.) The Receiver then sued Winston & Strawn—the law firm who sent him the initial pre-suit letter on behalf of CIHL and Cape PLC—in Richland County even though that law firm has no presence in this state. (Case No. 2024-CP-40-05397.)

But the Receiver also explained in a response letter to Winston & Strawn why he—a lawyer in South Carolina—feels justified in pretending to stand in the shoes of active, solvent European companies that have nothing to do with South Carolina. And while not making a formal appearance in the English proceedings, the Receiver instructed Winston & Strawn to present his case to the English court. They did exactly that. Justice Mann even outlined in his order and judgment that he considered the Receiver's own submissions when making his ruling:

> The receiver is not before the court, and he has not directly put his arguments before it. However, his case appears clearly enough from the court documents that he has filed in South Carolina, and he put his case in his answer to Winston & Strawn's letter before action. He invited them to ensure that his response was put before the English court (while, ironically, achieving their removal from the fray by suing them), and that letter, and its attachments and his complaint, were indeed before me and have been read by me. I am therefore well enough aware of what his case would be in relation to the issues underpinning the claims for a declaration.

(Supp. App. 69.) To suggest that the English court's order and judgment adverse to the Receiver were "unilateral" ignores the actual status of those proceedings and the Receiver's own work in getting his case before that court.

- No South Carolina assets at stake. The Receiver all but concedes the absence of any South Carolina connection to this case in his "report," where he repeatedly indicates his desire to collect assets "located in the *United States*." (Report at 2, 4, 14, 16 n.32 (emphasis added).) The Receiver uses the term "United States," not "South Carolina," because it is undisputed there are no assets in South Carolina: none for CIHL, and none for Cape PLC (though, notably, through his "misnomer" arguments to the circuit court, the Receiver has agreed that Cape PLC has nothing to do with this). The absence of South Carolina assets should be the ballgame.

As a matter of basic state (*e.g.*, S.C. Code Ann. § 15-65-10(4)) and federal constitutional law (*e.g.* the Commerce Clause), a state-appointed receiver cannot operate extraterritorially. This Court has already said so. *See Pollock v. Carolina Interstate B&L Ass'n*, 48 S.C. 65, 25 S.E. 977, 980 (1896) ("The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him."). The Receiver's concession there are no assets in South Carolina for him to marshal makes the termination of this receivership inevitable, and there is no reason to further delay such an outcome and continue wasting considerable party and judicial resources.

- *Barton* is irrelevant. The Receiver again retreats to the *Barton* Doctrine in both the motion to strike (Pages 6–7) and "report" to the circuit court (Pages 10–11). *Barton* cannot possibly provide the Receiver with cover here, though, because everything the Receiver has done and is doing is *ultra vires*. As detailed in Justice Mann's order and judgment, the full scope of the Receiver's conduct is without authority under the laws of England and Wales, the jurisdiction whose law governs the entity purportedly in receivership.

Barton itself explains that it provides no haven for a receiver engaging in *ultra vires* conduct. *See Barton v. Barbour*, 104 U.S. 126, 134 (1881) ("But if, by mistake or wrongfully, the receiver takes possession of property belonging to another, such person may bring suit therefor

against him personally as a matter of right; for in such case, the receiver would be acting *ultra vires*."). By its own terms, therefore, the *Barton* Doctrine is irrelevant here.

- There is no immunity. It is notable that the Receiver follows his reliance on *Barton* with a statement claiming "immunity" for receivership activity. (Mot. to Strike at 7.) The passage from *Barton* quoted in the paragraph above makes clear that a receiver who engages in *ultra vires* conduct is liable "personally as a matter of right" for such behavior. 104 U.S. at 134.

The South Carolina General Assembly has inserted this concept from *Barton* into the state receivership statutes and has specifically waived immunity for anyone responsible for an "improperly appointed" receiver. S.C. Code Ann. § 15-65-90. Under this statute, anyone responsible for "having procured" such a receiver—here, (1) the plaintiffs in the *Park* case, who were responsible for the receivership involving Cape PLC; and (2) the Receiver himself, as only the Receiver is responsible for modifying the *Park* receivership into a brand new appointment over CIHL—is liable to "any party to the cause having opposed such receivership"—here, the third-party defendants—for all of their "actual damages by reason of such receivership." *Id.*

Accordingly, there is no suggestion of immunity here because the General Assembly has specifically created a remedy for aggrieved entities who have been improperly subjected to a receivership, including against the Receiver himself for creating the CIHL receivership.

- *Adams* is indistinguishable. Finally, in the "report," the Receiver runs as far away from *Adams* as he possibly can. This is no surprise, as it reveals his entire third-party complaint to be a sham proceeding. The Receiver provides nothing to support any argument that *Adams* is distinguishable, and any such efforts to distinguish *Adams* from the Receiver's pleadings are futile.

Attached to this memorandum is a schedule (previously filed with the circuit court) that catalogues the Receiver's various allegations, compares them to what the American plaintiffs in

Adams alleged, and details how both a trial court (after a multiweek trial that spanned from February through July 1988) and an appellate court (after a multiweek process that spanned from April through July 1989) completely rejected the very allegations and claims that the Receiver is recycling now. There is virtually complete overlap between the Receiver's allegations here and the rejected allegations there. It is inescapable that *Adams* controls, and it is incredible that the Receiver would suggest otherwise (and to do so without proffering anything at all to support his position)—especially since he is supposedly standing in the shoes of the company that was victorious in *Adams* and claims to be charged with protecting its best interests.

Two other observations about the Receiver's attempts to distance himself from the full coverage that *Adams* provides here. First, he claims that his "expert" witnesses can somehow add to and change the historical facts underlying his fully-rejected "alter ego" theory. (Report at 15.) That is incorrect. An "expert" witness is, by definition, not a "fact" witness. The Receiver cannot seriously expect a court to ignore a 34-year-old, 140-page unanimous appellate decision (that resulted from a months-long, full-blown adversary process, and that was issued by a court that actually has jurisdiction over CIHL) because a professor-for-hire says he disagrees.

Second, the Receiver says that "South Carolina law on alter ego and corporate separateness in 2024 is materially—even radically—different from English law that *Adams* applied." (*Id.*) This is also incorrect, as South Carolina law has nothing to do with this issue.[2]

In *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 649, 817 S.E.2d 273, 277 (2018), this Court explained that the internal affairs doctrine requires that the law of the place where a

[2] The Receiver doesn't include any explanation about what he considers to be these "material" or "radical" differences in the law between England and South Carolina. Ultimately, South Carolina law is irrelevant on this corporate-governance issue, but it is notable that the Receiver made such a bold proclamation without supporting that statement in any way.

company is formed governs internal matters of corporate governance. While the *Pertuis* Court looked to South Carolina for a portion of its analysis, it did so because "one of the three corporate entities, Front Roe, is a South Carolina corporation; much of the conduct at issue occurred, at least in part, in South Carolina; and Pertuis, the minority shareholder, is a South Carolina resident." *Id.* at 650, 817 S.E.2d at 278. There is nothing in this case approximating those contacts with South Carolina that could possibly make South Carolina law relevant in any way: the Altrad Defendants are both French (one is an individual French citizen, the other is a French company), CIHL is English, Cape PLC is from the Bailiwick of Jersey, and the other third-party defendants are located in the U.K., South Africa, and all sorts of other locations—but not a single one is in South Carolina.

Not surprisingly, the *Pertuis* Court ultimately relied on North Carolina law, as the place of incorporation, to dispose of the claims against the North Carolina entities in that case. *Id.* at 657, 817 S.E.2d at 282. Accordingly, even *Pertuis* stands for the proposition that English law governs the Receiver's claims here regarding the internal corporate governance of an English company—and an English court has already explained, in granular detail, why those claims fail.

Conclusion

The Altrad Defendants' Supplement and accompanying Supplemental Appendix provide the Court with a glimpse into the status of this case, and it can certainly make itself aware of the Receiver's ongoing conduct and an English court's holding that the Receiver has no authority to speak on behalf of an English company that is subject to English law.

It is inescapable that there are "special and important reasons" why the Court should grant the Altrad Defendants' certiorari petitions and put an end to the receivership without delay, and the Court can avail itself of publicly-available information when choosing to exercise that discretion. The motion to strike should be denied.

Respectfully submitted,

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December 16, 2024