

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jean H. Toal
Acting Circuit Court Judge

Supreme Court Case Nos. 2024-001499, 2024-000916, 2024-002114, & 2024-002116
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 “EMERGENCY MOTION FOR
SUPERSEDEAS TO PROTECT AND ENFORCE JURISDICTION AND FOR TEMPORARY
RESTRAINING ORDER”

Respectfully submitted,

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TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 1

Attempts to Speak for CIHL, an English Company..... 2

The High Court’s Order and Judgment 3

No South Carolina Property 5

Altrad Defendants’ Defensive Efforts 6

STANDARD OF REVIEW 8

ARGUMENT 10

I. The Altrad Defendants haven’t done anything of which they’ve been accused in the “emergency motion.” 10

II. A TRO cannot be issued to stop a business’s normal operations, which is what the Receiver appears to be seeking. 11

III. The Receiver does not even try to meet the basic elements of an injunction analysis. 12

IV. It would be inequitable to issue an injunction, particularly in light of the Receiver’s prior abuses towards other lawyers and parties within the Asbestos Docket. 15

Table of Lawyers and Law Firms Sued or Threatened with Suit by the Receiver 17

V. *Barton* expressly provides no protection for a receiver’s *ultra vires* actions. 21

VI. The Receiver has no immunity for *ultra vires* actions..... 21

CONCLUSION..... 22

INTRODUCTION

The Receiver's motion is misguided from the outset, and he claims an emergency where none exists. The "Petitioners"—that is, the Altrad Defendants—were not parties to the proceeding in the United Kingdom, the only proceeding the Receiver challenges in his motion. The Petitioners are an individual French citizen (Mr. Altrad) and a French company (Altrad Investment Authority SAS). They are not parties to any actions pending before the High Court of Justice in England and Wales, nor have they made any "threats" or undertaken any efforts to "intimidate" or "harass" the Receiver. And, of course, neither have below-signed counsel.

Instead, English counsel for Cape Intermediate Holdings Limited ("CIHL")—an English company that has no connection to South Carolina, and which is not a "Petitioner" in this appeal—has sought and secured orders from an English court finding that the Receiver "had no power or authority to act on behalf of CIHL in England and Wales or worldwide." (Supp. App. 2.) Because the High Court's orders relate to the very heart of the issues that are presented in numerous appeals pending with this Court, the Petitioners simply provided copies of those orders to the Court.

CIHL remains entirely within its rights to take steps before an English court to protect itself from the Receiver's overreach. The Court should deny the Receiver's motion. But, respectfully, it should also recognize that this motion makes certiorari review essential, and it should vacate the rulings below and dismiss this case without delay, as discussed below.

BACKGROUND

To assist the Court in understanding the context and impetus behind the English judgment that has prompted the Receiver's motion, why that ruling is not an overreach on the part of the English courts, and why the Receiver's case indisputably fails on its merits as a matter settled law, below is a summary of the proceedings to date.

Attempts to Speak for CIHL, an English Company

The Receiver purports to speak for and sue others illicitly using the authority of CIHL. In CIHL's name, the Receiver's stated objective here is to create a "reckoning" that siphons "billions of dollars" away from the third-party defendants, none of which are South Carolinians. (App. 10.)

The entire theory underlying the Receiver's "reckoning"—that a host of foreign companies operated as one another's alter ego to distribute asbestos in the United States throughout the 20th Century while also avoiding liability—was tried and rejected at trial and on appeal decades ago in England. *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA) (copy at Supp. App. 104–483).

In other words: the Receiver is a South Carolina lawyer purporting to speak for an English company, suing foreign companies and an individual French citizen in a South Carolina court in the name of an English company, and asking a South Carolina trial court to undo the results of a 34-year-old English case that actually protects the English company for which he claims to speak and is duty-bound to protect.

In August 2024, CIHL's director informed the Receiver he has no authority to do anything in the company's name. (App. 699–707.) When the Receiver refused to honor those instructions, CIHL invoked the English laws and court system that governs CIHL's internal affairs. After an exhaustive review of the Receiver's action in South Carolina, Justice Mann held the Receiver was without authority to speak or act for CIHL anywhere in the world, including South Carolina, as it has no connection with South Carolina. The Receiver's continued efforts to act on behalf of CIHL were against the bounds of both English law and the law of South Carolina, and Justice Mann found they amounted to the Receiver acting as an "impostor." *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (copy at Supp. App. 1–83).

The High Court's Order and Judgment

The High Court's order and judgment deserve specific attention. In the English proceedings, Justice Mann considered this matter over the course of three days. He then produced a 73-page judgment, which carefully went through every aspect of this situation, including the international law implication of this case. That judgment and accompanying order are at Pages 1 through 83 of the Supplemental Appendix, and their content is described below.

In that judgment, it is unmistakable that Justice Mann was at pains to show the highest judicial respect to the South Carolina Judiciary and the mutual need for comity between these jurisdictions. In this regard, he made it expressly clear that he was not seeking to act as an appellate court, but rather that the basis of his judgment was that as a matter of international law, the English court is the appropriate jurisdiction to deal with questions concerning the governance of CIHL, an English company. In this instance, he concluded that it was for the directors of CIHL (which is not insolvent and where there are no judgments against it) to manage the company in accordance with their legal duties and to make decisions in its name.

Notwithstanding the Receiver's description of it, the judgment of the English court should not be mischaracterized as merely a tussle between two jurisdictions, but instead it is an in-depth analysis as to (1) why comity between jurisdictions really matters, and (2) how the international legal system of justice needs to work together to achieve this end.

In this regard, it is notable that Justice Mann expressed serious misgivings that the facts and matters relating to CIHL and the Court of Appeal English authority of *Adams* had not been set before Justice Toal in the initial motion to appoint a receiver in *Park*, nor by the Receiver subsequently.

In summary, the central points detailed by Justice Mann in the order and judgment include:

- (1) At no point in time did CIHL have any actual presence in the United States, including South Carolina. Nor does it have assets in the United States or South Carolina.
- (2) That NAAC (incorporated in Illinois) did not make contracts for and on behalf of CIHL in the United States, and that the relationship between NAAC and CIHL did not give rise to the presence of CIHL in the United States—as the High Court and Court of Appeal found on the facts in *Adams*. The arguments as to alter ego, piercing the corporate veil or single economic unit were dismissed on the facts. The English appellate court produced a 40-page Appendix, which involved a thorough consideration of the facts in question. (Supp. App. 246–86.)
- (3) He concluded that the High Court and Court of Appeal effectively covered the same ground as the claims now sought to be made in South Carolina in the “third-party complaint” and that the allegations made in that pleading were exactly contrary to the findings of the English courts.
- (4) He found that it was hard to see how a receiver charged with protecting the interests of CIHL could serve a pleading in *Tibbs* that all but conceded liability, responsibility, and presence.
- (5) He concluded that a matter of international law, CIHL did not have a presence in South Carolina (or anywhere in the United States) at the time which was relevant in *Adams*, and it has not had one since. Nothing in the facts alleged in any of the court documents relating to the receivership demonstrated a change in facts between then and now.
- (6) He held that the problems created by the receivership gave rise to the English board of directors were real, their consequences serious, and that the board was justified in being concerned about them and in wanting to have them removed.
- (7) He determined that the Receiver, in choosing to initiate and pursue the “third-party complaint,” was committing a tort under English law against CIHL. The Receiver had acted without the consent of the legitimately appointed board of CIHL and is potentially and unjustifiably damaging the legitimate interests of CIHL.
- (8) He stated that there was nothing to suggest that the decision of *Adams* and its significance to these questions was drawn to the attention of the South Carolina circuit court, and that the apparent failure to do so is a matter of serious concern.

Justice Mann concluded that, while fully respecting issues of comity, and intending no disrespect to the jurisdiction of South Carolina, the strength of the connection of the English jurisdiction and the need to protect international law both required and justified the declaratory orders and injunctions to be made by the English court in this matter.

No South Carolina Property

Although the Receiver's conduct caused CIHL to seek relief in the English courts, South Carolina law has also never permitted a receiver to act for a solvent, foreign entity with no operations in the state. There is no dispute that CIHL has no property in (or even any contact with) South Carolina. The absence of any property here pushes CIHL beyond the limited scope of this state's receivership statute. *See* S.C. Code Ann. § 15-65-10(4) (giving a circuit court authority to appoint a receiver "[w]hen 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") (emphasis added).

This conclusion isn't simply a function of statutory interpretation; it is a rule of constitutional law and is the foundation of the Altrad Defendants' and the Charter/ESAB Defendants' primary appeal before this Court. *See, e.g., Pollock v. B&L Ass'n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) ("[C]ourts of equity cannot acquire extra territorial jurisdiction over property by appointing receivers. The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him." (quoting 20 Am. & Eng. Enc. Law 65–66, and Gluck & Becker on Receivers 3)); *see also Ex parte First Penn. Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966) ("[T]he jurisdiction of a state is restricted to its own territorial limits.").

And this Court has previously enforced this rule. *See, e.g., Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver over a foreign corporation because, as here, "there [wa]s a total failure of any proof that it ha[d] property in this state"); *Frink v. Nat'l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) ("That a receiver has no extra territorial authority is too well settled to require the citation of authority."); *Pollock*, 48 S.C. at 74, 25 S.E. at 980 (explaining that "a receiver has no extra territorial power of

official action, none of which the Court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor’s property,” and that “[r]eceivers appointed by one jurisdiction are not entitled as of right to recognition in other jurisdictions”).¹

As the Court is aware, there are myriad defects plaguing this receivership and heavy-handed (and misleading) accusations being lodged against the third-party defendants in this case, including in the Receiver’s motion. But this Court can end this fiction by simply acknowledging that the absence of any CIHL property in South Carolina puts this receivership outside the bounds of what is permitted by statute.² Recognition of this fundamental principle of law would bring a decisive, simple end to this entire situation.

Altrad Defendants’ Defensive Efforts

For their part, the Altrad Defendants have consistently asserted that they are not subject to personal jurisdiction in South Carolina—as they are an individual French citizen and a French company, neither of whom has any contact with South Carolina, much less contacts sufficient to create personal jurisdiction here—and they have likewise implored the lower courts to enforce the basic point of law that a South Carolina court cannot possibly appoint a receiver over an English company with no assets in South Carolina. They respectfully reiterate those same points now.

¹ This law forbidding extraterritorial reach also voids any reliance on Section 15-65-10(5).

² There was never a basis for any receivership here. The Altrad Defendants have detailed the tortured history of this case—from the wrongful appointment of a receiver over Cape PLC in *Park* without a hearing nine months after that case was “fully resolved,” to this Receiver’s efforts to modify the *Park* appointment into the current receivership over CIHL through a “misnomer” argument that fails as a matter of law, to the Altrad Defendants’ unsuccessful efforts to have the circuit court honor the “exclusive jurisdiction” of the appellate courts while their appeal of the order creating the receivership over CIHL has been pending—in their various filings with this Court in Appellate Case Nos. 2024-000916 and 2024-001499, along with their two additional certiorari petitions filed on December 16, 2024. This situation’s background in no way comports with the limitations imposed by the U.S. and South Carolina Constitutions or this Court’s repeated warnings that the “drastic remedy” of a receivership “should be granted only with reluctance and caution.” *E.g., Richland County v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018).

When the circuit court refused and, instead, rewrote the initial receivership appointment order to create the now-challenged receivership over CIHL, the Altrad Defendants appealed and asked the circuit court to honor the “exclusive jurisdiction” vested in the appellate courts by Rule 205, SCACR, while that appeal was pending. The circuit court refused to issue such an injunction, prompting a second appeal to enforce Rule 205’s jurisdictional boundaries.

The Altrad Defendants filed their appeal of the order creating the CIHL receivership on December 18, 2023. For a year, the Court of Appeals has not engaged on the merits, but instead dismissed that initial appeal and every subsequent appeal filed by the Altrad Defendants, the Sparrows Defendants, the Charter/ESAB Defendants, and the DeBeers/Oppenheimer Defendants.³

In the meantime, the circuit court has allowed the receivership to march forward in the face of numerous appeals, the absence of personal jurisdiction over the Altrad Defendants, the complete lack of any South Carolina property (or South Carolina contacts) at issue, Rule 205’s vesting of “exclusive jurisdiction” in the appellate courts, and the ironclad *Adams* decision that fully rejects all issues presented in the Receiver’s “third-party complaint.”

For diligently preserving their objections based on the lack of personal jurisdiction, the impropriety and unconstitutionality of the receivership, and the lack of jurisdiction over the receivership due to Rule 205, the circuit court deemed the Altrad Defendants and other third-party

³ South Carolina Code § 14-3-330 specifically creates appellate rights for each of the discrete issues raised in the circuit court’s orders over the life of this case. The Court of Appeals has not issued any order involving the merits of this case, but instead has repeatedly dismissed appeals despite clear approval from the appellate statute and established South Carolina jurisprudence. Those dismissals have now become a series of petitions for writs of certiorari from the Altrad Defendants and the Charter/ESAB Defendants that are pending before this Court. And the fact that the Court of Appeals has yet to engage in the merits directly undercuts the Receiver’s claims that this receivership has passed any kind of “scrutiny” to date. (Emergency Mot. at 6.) The simple fact is that the circuit court alone is the only court that has ever endorsed this receivership, and the appellate process has only now reached this Court.

defendants to be “recalcitrant,” sanctioned them, held them in contempt, struck portions of their answers, ignored their jury-trial demands, presumed facts (even unalleged ones) against them, and declared “authentic” and “preadmitted” for trial every single document the Receiver has presented to it—but only for use against the Altrad Defendants and the Charter/ESAB Defendants, not against other litigants.

* * * * *

In the face of considerable adversity, the Altrad Defendants have diligently followed this Court’s precedents with respect to preserving their key issues for appellate review. So have the Charter/ESAB Defendants who join in this appeal. The Altrad Defendants continue to respectfully request that the Court grant their certiorari petitions and bring these proceedings to an end. The pitched nature of the Receiver’s “Emergency Motion” further underscores that there are “special and important reasons” for this Court to take up this case. Rule 242(b), SCACR.

And when an English court determined the Receiver had no authority to speak on behalf of an English company with no connection to South Carolina—a holding that is fully consistent with South Carolina law on this exact same point—the Altrad Defendants felt it important to inform both the circuit court and this Court of this update. That does not provide any basis for the Receiver’s current motion.

STANDARD OF REVIEW

The Receiver’s motion states that it is brought pursuant to Rule 241, SCACR. (Emergency Mot. at 8.) That rule allows this Court either to suspend the effect of a lower court’s order pending appeal, or to lift the automatic stay that has attached to a lower court’s order pending appeal. Presumably, the Receiver does not actually want supersedeas to issue.

The only orders eligible for treatment under Rule 241 are the circuit court orders for which the Altrad Defendants and the Charter/ESAB Defendants presently seek certiorari review:

- (1) The circuit court's order creating the CIHL receivership and modifying and continuing the prior Cape PLC receivership;
- (2) The circuit court's refusal to issue an injunction pursuant to Rule 205, which is specifically designed to protect this Court's appellate jurisdiction;
- (3) The circuit court's order striking a part of the Altrad Defendants' answer and holding them in contempt; and
- (4) The circuit court's order requiring a bench trial, rather than a jury trial as demanded.

The Altrad Defendants welcome a supersedeas over those orders and staying their effect while the Court considers the various certiorari petitions. That would—rightly—suspend the receivership during this Court's consideration of the issues. It is surprising that the Receiver is now asking for “a supersedeas to protect and enforce the Court's jurisdiction” (Emergency Mot. at 5) when he has historically chided the Altrad Defendants and others for seeking precisely that relief through their request for an injunction pursuant to Rule 205, SCACR, before the circuit court.

The only other relief identified in the motion is for a “temporary restraining order.” This request appears in the caption of the motion and is mentioned again on Page 5, though it is never given any discussion or treatment in the motion. In any event, such a request should be denied.

Injunctions—even temporary ones—are a “drastic” remedy, and can only be issued if the applicant can prove with evidence there exists a risk of “irreparable harm,” a “likelihood of success on the merits,” and “the absence of an adequate remedy at law.” *Denman v. City of Columbia*, 387 S.C. 131, 140–41, 691 S.E.2d 465, 470 (2010). TROs in particular are governed by Rule 65, SCRCR. They can only be issued if evidence is presented that “clearly” shows the applicant will suffer “immediate and irreparable injury, loss or damage” without the TRO. *Id.* 65(b). They can only be issued if accompanied by sufficient security to protect the person against whom the TRO is entered. *Id.* 65(c). And they cannot be issued against a business to suspend its “general and ordinary” operations. *Id.* 65(e).

The Receiver cannot possibly meet this standard, which he doesn't even truly argue for in his motion. The motion should be denied accordingly.

ARGUMENT

I. The Altrad Defendants haven't done anything of which they've been accused in the "emergency motion."

The Receiver's motion is based on the fiction that the "Petitioners"—namely, the Altrad Defendants—have served notices to the Receiver that if he takes additional actions in furtherance of the putative receivership in violation of the English order finding that he has no authority to speak for CIHL, then he risks being sanctioned by the English court. The entire motion uses the phrase "Petitioners" as if the Altrad Defendants have somehow wronged the Receiver. (*See* Emergency Mot. at 3 ("Petitioners, by and through UK counsel, Signature Litigation, LLP"), 4 ("the Altrad Petitioners' agents"), 5 ("Petitioners have now gone to the UK," and "Petitioners and their counsel"), and 6 ("the Altrad Petitioners will continue to apply for relief with the English Court").) But this is false; the Altrad Defendants—the "Petitioners"—have done nothing before the English courts.

CIHL is an English company. Acting through its board of directors, it independently hired counsel and took that company's case to the court that has jurisdiction over CIHL, seeking that court's protection from the punitive and unauthorized acts of the Receiver. The Altrad Defendants—French entities—are not parties to those proceedings, nor did they participate in those proceedings. And the Receiver must know these groups aren't the same, as he claims to speak for CIHL while he is simultaneously suing the Altrad Defendants.

In the motion, the Receiver makes much of the fact that there is indirect ownership overlap among the various companies, but, of course, that ignores the basics of corporate separation demanded by the laws of South Carolina, England, and everywhere else. CIHL has its own

independent management, who owe a fiduciary duty to CIHL and who are unquestionably entitled to take action in CIHL's name to protect that company's interests. CIHL's management alone undertook to seek an order from an English court declaring that they, and not the Receiver, can speak and act for CIHL. And CIHL is not before this Court and is not subject to personal jurisdiction here.⁴

At bottom, the Receiver's motion requests an order enjoining imaginary conduct that the French Altrad Defendants and their South Carolina counsel never actually did. There is no legal or factual foundation for such a request, and thus no action required of the Supreme Court.

II. A TRO cannot be issued to stop a business's normal operations, which is what the Receiver appears to be seeking.

The context from which this motion arises matters. The Receiver is purporting to speak for and take actions on behalf of CIHL; CIHL, in contrast, has requested that an English court put an end to such "impostor" behavior so that it can continue with its regular business unimpeded.

Rule 65(e), SCRPC, specifically prohibits a TRO from being issued to interfere with a business's "general and ordinary" operations. But that is precisely what CIHL is wresting from the Receiver through its litigation in the United Kingdom: a judicial declaration that CIHL's actual management, not the Receiver, controls CIHL's business. Accordingly, by Rule 65's plain terms, a TRO cannot issue in this instance as a matter of law. The motion should be denied.

⁴ This bears highlighting so that the Court can appreciate what has happened, and is happening, below: CIHL is not even a party to the *Tibbs* case, despite *Tibbs* being the case in which the receivership order over CIHL was entered and in which the Receiver purports to be seeking a "reckoning" that runs directly contrary to *Adams*. To state the obvious: There is no way the Receiver, claiming to act on behalf of CIHL, can possibly bring a "third-party complaint" allegedly on behalf of an entity that is not even a party to the underlying case from which the "third-party complaint" supposedly derives. This is yet another reason why this whole case is illusory and should not be allowed to proceed one moment longer.

III. The Receiver does not even try to meet the basic elements of an injunction analysis.

In addition to requesting a futile act of the Court and a TRO that is forbidden by the rules themselves, the Receiver's motion also fails a basic injunction analysis.

No Risk of "Irreparable Harm." There is no "clear" evidence that the Receiver will suffer "immediate and irreparable injury, loss or damage" without the TRO. Rule 65(b), SCRPC. To the contrary, when CIHL's English counsel made the English court aware that the Receiver was continuing to purportedly speak on behalf of CIHL in these proceedings in South Carolina, the English court entered an order that simply held that the Receiver had no authority to do so. The total relief issued regarding the Receiver's post-judgment conduct was as follows:

IT IS DECLARED THAT

1. Mr. Protopapas' filings in the courts of South Carolina on 27 November 2024 (as described in Oren 3) were made without any authority to act on behalf of CIHL.
2. Mr. Protopapas' filings in the courts of South Carolina on 6 December 2024 (as described in Oren 3) were made without any authority to act on behalf of CIHL.
3. The court declines to grant the further relief sought at this hearing.

AND IT IS ORDERED THAT

4. There will be no order as to costs.
5. Mr. Protopapas may, within 7 days after the date on which this order is served on him, apply on notice to set aside or vary this order.

(Order of Justice Mann at 2 (Dec. 13, 2024) (copy attached as Exhibit 4 to Emergency Motion).)

The Receiver's suggestion that anyone—CIHL, Justice Mann, the Altrad Defendants, below-signed counsel, or anyone else—is threatening to "jail members of the Federal and State Bench, its lawyers, or officers for enforcing United States and South Carolina law" (Emergency Mot. at 6) is untrue on its face and is belied by the sensitivity with which Justice Mann has addressed this entire situation. Justice Mann exercised great care, as reflected in his 73-page

findings, to be respectful of Justice Toal in his initial order and judgment, and he was likewise delicate in his most recent ruling.

In fact, on the face of his most recent order, Justice Mann declined “to grant the further relief sought at this hearing,” he declined to order costs associated with that hearing, and he invited the Receiver to “apply on notice to set aside or vary this order.” (Order of Justice Mann at 2 (Dec. 13, 2024) (copy attached as Exhibit 4 to Emergency Motion).)⁵ This is not the work of a punitive jurist, but instead reflects a judge deliberately balancing being respectful to a coordinate court, on the one hand, and correcting an obvious wrong that is indescribably detrimental to a company within his court’s jurisdiction, on the other.

Despite the Receiver’s efforts to move the Court with inflammatory rhetoric and empty predictions of “jail,” it’s simply that—rhetoric. The Receiver has presented no evidence, much less “clear” evidence, of any “immediate and irreparable injury” necessary to support a TRO—nor is there any such evidence, as the “Petitioners” haven’t done anything before the English courts.

Zero Likelihood of Success. As explained above and in virtually all of the Altrad Defendants’ filings with this Court, this receivership has been in error from the outset:

- It was the product of a motion filed by plaintiffs in the *Park* case filed nine months after they reported to the circuit court the case was “fully resolved,” and the motion falsely claimed that Cape PLC (not CIHL) had “forfeited” the right to do business in South Carolina, making it eligible for a receivership appointment under South Carolina Code § 15-65-10(4). But none of that was true; Cape PLC has never done any business in South Carolina, and in fact has no contacts with South Carolina. The circuit court granted that motion without a hearing, but it has since acknowledged this error.
- There is nothing in the record demonstrating Cape PLC and CIHL were ever served with process in the *Park* case in the first place. Without service, there is no jurisdiction. *See BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) (“A judgment is

⁵ Of note, Justice Mann’s initial order states that CIHL’s costs will “be paid by the Defendant on the standard basis, to be a matter of detailed assessment if not agreed.” (Supp. App. 3.) But following the standard English procedure for assessing costs associated with English litigation is not evidence of an “irreparable harm.”

void if a court acts without personal jurisdiction. A court generally obtains personal jurisdiction by service of a summons.”).

- The initial receivership appointment order says the appointment is limited to “this case”—that is, *Park*. Yet the Receiver has breached that restriction, as practically everything he has attempted to do in CIHL’s name has taken place in the *Tibbs* case.
- The Receiver—purportedly in CIHL’s name—entered into an agreement with lawyers who regularly bring claims in the Asbestos Docket whereby the Receiver agreed to toll the statute of limitations for any claim against CIHL in exchange for those plaintiffs’ attorneys dismissing claims against CIHL. That agreement was entered before the Receiver brought his “third-party complaint” against the Altrad Defendants and others, exposing the illusory nature of the supposedly “derivative” case. That agreement was not disclosed until counsel for the Altrad Defendants inquired about CIHL’s status as a “first-party defendant” in open court.
- When numerous procedural problems were identified with the initial appointment of a receiver over Cape PLC (not CIHL), the Receiver himself argued that this was a “misnomer” and speculated that the *Park* plaintiffs intended to have the appointment apply to CIHL instead of Cape PLC. Such mutation is prohibited in South Carolina. *See Porter v. Brown*, 149 S.C. 151, 157, 146 S.E. 810, 812–13 (1929) (holding that a receiver who was appointed over one company cannot lawfully claim an appointment over a different company and that the initial appointment order should be vacated).
- Neither the initial appointment order nor the modified order that created the CIHL receivership identify a bond that can be paid to terminate the receivership. Such a bond is required by South Carolina law. S.C. Code Ann. §§ 15-65-50 to -60.
- There is no South Carolina nexus to this receivership. CIHL (and Cape PLC, for that matter) has no connection to South Carolina: no property, no judgments, no contacts at all. This pushes the company beyond the scope of the South Carolina receivership statutes, violates (at least) the Commerce Clause, and voids the receivership, as explained in the “Background” section above and the numerous cases listed therein.
- Everything the Receiver is arguing to the circuit court has been thoroughly rejected following multi-week trials and appeals in *Adams*. He is peddling a false narrative to the circuit court in an apparent effort to put CIHL in peril for the benefit of others, but he is purporting to do so in CIHL’s name. This is unconscionable.

The fatal defects with this receivership continues beyond those listed above, but the point is obvious. There are numerous legal and factual problems with this receivership—including several discussed by Justice Mann when holding that the Receiver’s conduct in CIHL’s name is *ultra vires* and void.

An Adequate Legal Remedy Is Available. Finally, the Receiver does not need an injunction from this Court because he has an adequate remedy elsewhere: he can appear before the English court and explain why he—a lawyer in Columbia, South Carolina—believes he has authority to speak on behalf of CIHL. The English High Court has ensured that each and every step of the proceedings in that court have been with the Receiver’s awareness and invitation to participate. Even the most recent December 13th order ended with instructions to serve a copy of the order on the Receiver and authorized him to seek reconsideration of that ruling if he believes any part of it is in error. (Ex. 4 to Emergency Motion, at 2.)⁶

Because the Receiver has an adequate remedy to address his perceived grievance, he fails the final prong of the injunction analysis, just as he fails the “irreparable harm” and “likelihood of success” elements. Because he fails every part of the test for an injunction, the Court should deny the Receiver’s motion for a TRO.

IV. It would be inequitable to issue an injunction, particularly in light of the Receiver’s prior abuses towards other lawyers and parties within the Asbestos Docket.

Injunctions are equitable remedies. *See Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013) (describing injunctions as “a drastic equitable remedy”). And while “balancing the equities” is no longer a specific part of the injunction analysis, the Court should not overlook the Receiver’s own conduct within the Asbestos Docket generally, and within this case in particular, when considering this motion.

⁶ In this regard, the Receiver has already engaged with an English law firm, as counsel at Morgan, Lewis & Bockius’s offices in London attempted to serve materials on English “third-party defendants” in this case. (*See, e.g.*, Exhibits to the Receiver’s Motions for Entry of Default in Case No. 2023-CP-40-01759 (filed Aug. 18, 2023) (demonstrating that purported service on English “third-party defendants” originated out of Morgan Lewis’s London office).)

Throughout the motion, the Receiver argues that the English order and judgment enjoining him from further purporting to speak on behalf of CIHL has been “weaponized” against the Receiver and his counsel (Emergency Mot. at 4); is being used to “intimidate” him and his counsel (*id.* at 4); is prompting the Receiver and his counsel not to “fulfill their obligations to the Receiver court or their ethical obligations as counsel to their clients” (*id.* at 5); and “is violative of the integrity and ethics of the American judicial system (*id.* at 6). He even quotes the South Carolina criminal law against “intimidation of court officials, jurors or witnesses,” though there is no explanation how that statute could possibly be relevant here. (*Id.* at 5 n.4.)

There is considerable irony to the Receiver’s posturing to this Court. For years, the Receiver has indiscriminately denigrated and threatened opposing counsel when they dared to represent their clients adversely to the Receiver’s overreach. His serial lawsuits (actual and threatened), sanctions requests, and subpoenas against other lawyers have created a universe of sub-litigation within the Asbestos Docket, all designed to chill adverse advocacy.

On the following page is a table of lawyers and law firms that the Receiver has sued or threatened to sue for all kinds of alleged claims: legal malpractice, “fraud on the court,” declarations that the Receiver is entitled to the law firm’s client files, spoliation of evidence for representations of clients dating back decades, and declarations that law firms must “account” for all fees received from clients, among others. Each is designed to punish a law firm for representing its clients or drive a wedge between the law firm and its clients. Or, in the Receiver’s words, to “weaponize” the judiciary, “intimidate” lawyers, and “violate the integrity and ethics of the American judicial system.”

Table of Lawyers and Law Firms Sued or Threatened with Suit by the Receiver

<u>Lawyer/Law Firm</u>	<u>Receivership</u>	<u>Case</u>
Gallivan, White & Boyd, PA	Covil Corp.	2017-CP-42-04429 (<i>see</i> Order Dated June 29, 2022)
Wall, Templeton & Haldrup, PA	Covil Corp.	2019-CP-40-02285
Fox Rothschild, LLP	Whittaker Clark & Daniels	2023-CP-40-02034
Stephanie Flynn (Fox Rothschild)	Whittaker Clark & Daniels	2023-CP-40-02034
McGivney Kluger Clark & Intoccia, P.C.	Whittaker Clark & Daniels	2023-CP-40-02034
Robert Baum (McGivney Kluger)	Whittaker Clark & Daniels	2023-CP-40-02034
Lathrop GPM	Whittaker Clark & Daniels	2023-CP-40-02034
Robert Thackston (now at Nelson Mullins)	Whittaker Clark & Daniels	2023-CP-40-02034
Kenneth C. Baker & Patterson, LLP	Payne & Keller Co.	2023-CP-40-05203
Kenneth C. Baker (Baker & Patterson)	Payne & Keller Co.	2023-CP-40-05203
Locke Lord, LLP	Cape, PLC	2021-CP-40-02727
Goldfein & Joseph, P.C.	Atlas Turner	2023-CP-40-03540
Winston & Strawn, LLP	CIHL	2024-CP-40-05397
Kobi Kennedy Brinson Terry Brown, Jr. Stacie Knight Alyson Traw (all with Winston & Strawn and identified in Receiver's complaint as South Carolina attorneys who "should be familiar with laws governing lawyers and receiverships")	CIHL	2024-CP-40-05397

In addition to actual or threatened lawsuits, the Receiver regularly seeks to intervene between lawyers and their clients through subpoenas and motions practice demanding that attorneys turn over their privileged, confidential client files to him—including in this case. *E.g.*, CIHL Receiver’s Motion to Compel filed against Herbert Smith Freehills, LLP in Case No. 2023-CP-40-01759 (filed Nov. 18, 2024); ACL Receiver’s Motion to Compel filed against Hawkins Parnell & Young, LLP in Case No. 2023-CP-40-01759 (filed Apr. 11, 2024); ACL Receiver’s Motion to Compel filed against Gordon Rees Scully Mansukhani, LLP in Case No. 2023-CP-40-01759 (filed Jan. 22, 2024).

Those efforts have also extended to subpoenaing former Chief Judge Wilkins regarding his limited report to the English court regarding South Carolina receivership law. As Justice Mann observed, the Receiver’s “extensive demands for disclosure on the judge” “looks intimidatory.” (Supp. App. 46.)⁷

And as the Court almost certainly recalls, the Receiver has been a serial filer of sanctions motions against litigants and their lawyers. Take the Covil receivership for instance. In a single case, the Receiver filed five sanctions requests against various defendants (including on August 27, 2020; September 25, 2020; October 29, 2020; December 23, 2020; and before this Court on December 31, 2020) in Circuit Court Case No. 2019-CP-40-03003 alone. And the Receiver even filed—without any explanation whatsoever—a motion to “reconsider” an order approving an adverse attorney’s *pro hac vice* application in that case (September 10, 2020).

His sanctions requests haven’t been limited to that case or the Covil receivership, and they are a frequent litigation tactic when the Receiver has an adversary. *See, e.g.*, Case No. 2023-CP-

⁷ Along with the attacks on Chief Judge Wilkins, Justice Mann appears to have been particularly concerned with the Receiver’s attacks on Winston & Strawn, and he highlighted those attacks “to show the aggressive propensities of the receiver.” (Supp. App. 45–46.)

40-01759 (sanctions motion filed on August 16, 2024); Case No. 2023-CP-40-03484 (sanctions motion filed against the below-signed counsel and two parties on July 2, 2024); Appellate Case No. 2023-001461 (sanctions motion filed on December 11, 2023); Appellate Case No. 2020-000845 (sanctions motion filed on August 10, 2020); Case No. 2020-CP-40-02098 (sanctions motion filed on September 8, 2021); Case No. 2019-CP-42-03968 (sanctions motions filed on June 4, 2020; and February 7, 2020); Case No. 2018-CP-40-04940 (sanctions motions filed on April 20, 2020; and May 18, 2020).⁸

The point of the above is inescapable: the Receiver is far from “intimidated.” When a litigation adversary dares to oppose the Receiver, he routinely and forcefully attacks lawyers and tries to disrupt their ability to represent their clients. It is the unfortunate reality of litigating in the Asbestos Docket.

But just as a schoolyard bully finds no solace when he goes to the principal’s office, the Receiver’s cries that an English court’s declaration that he can no longer claim to stand in the shoes of an English company with no property in or contact with South Carolina—a ruling that is indisputably compelled by South Carolina law—has somehow “weaponized” the legal system and has “intimidated” him and is “violative of the integrity and ethics of the American judicial system” should be completely disregarded by the Court.

* * * * *

⁸ The Altrad Defendants do not intend to imply that the above lists of lawsuits, discovery motions, and sanctions requests are comprehensive. There is no central repository for all filings in the Asbestos Docket, so there is no way to state with certainty that these lists identify the entire universe of all such filings. But they are certainly representative of the Receiver’s litigation attacks against lawyers.

“He who seeks equity must do equity.” *Ingram v. Kasey’s Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). Likewise: “He who comes into equity must come with clean hands.” *Straight v. Goss*, 383 S.C. 180, 207, 678 S.E.2d 443, 458 (Ct. App. 2009)) (quoting *Emery v. Smith*, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004)).

In this case alone, the Receiver has sought all manner of sanctions against the Altrad Defendants and their co-third-party defendants. He repeatedly mocks efforts by “the same counsel” to assert arguments and preserve issues for appellate review (including chiding arguments to protect the appellate courts’ “exclusive jurisdiction” specifically provided under Rule 205 as “frivolous”), and he has requested the circuit court order the Altrad Defendants and others pay **over \$2.7 million** to the Receiver for **undisclosed** fees and costs as a sanction for advocating adverse to his “reckoning.” (E.g., Letter from the CIHL Receiver (July 2, 2024); CIHL Receiver’s “Report on Attorneys’ Fees and Costs” (June 24, 2024), both in Case No. 2023-CP-40-01759.) The Receiver harassed Chief Judge Wilkins with an oppressive subpoena for submitting a neutral summary of South Carolina receivership law to the English courts. And he sued CIHL’s English lawyers—Winston & Strawn—for simply representing their client before the English courts.

Given the Receiver’s systematic efforts to attack lawyers, it would be inequitable to give any legitimacy to his position that an English court enforcing the law regarding an English company has somehow “intimidated” him and his counsel, has somehow “weaponized” the legal system, or has somehow “violated the integrity and ethics of the American judicial system.” (Emergency Mot. at 4, 6.) His lawyers—Smith Robinson; Gallivan, White & Boyd (which is on the list of firms the Receiver has sued or threatened to sue); and Morgan, Lewis & Bockius—are free to make their own judgments about how to respond to the High Court’s instructions. But the Receiver is not entitled to any relief sought through his motion, and it should be denied.

V. *Barton* expressly provides no protection for a receiver’s *ultra vires* actions.

As is commonplace in these cases, the Receiver retreats to the *Barton* Doctrine in his motion and claims that “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.” (Emergency Mot. at 7.) *Barton* cannot possibly provide the Receiver with cover here because of the Receiver’s *ultra vires* conduct—conduct that is chronicled in painstaking detail by Justice Mann in his lengthy judgment and order.

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 provides no help to the Receiver here.

VI. The Receiver has no immunity for *ultra vires* actions.

It is notable that the Receiver follows his reliance on *Barton* with a statement claiming “immunity” for receivership activity. (Emergency Mot. 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 brought the motion 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 can be no suggestion of immunity here because the General Assembly created a remedy for aggrieved entities who have been improperly subjected to a receivership, including against the Receiver himself for creating the CIHL receivership. The Receiver’s argument about “immunity” is both irrelevant to the TRO question and fails as a matter of law.

CONCLUSION

The Receiver’s motion smacks of a “hit dog hollering.” But the Altrad Defendants didn’t do the “hitting”; CIHL did, and it isn’t even a party to this case.

Instead, the Altrad Defendants (a French individual and a French company) and their counsel have only reported to this Court that the English courts have enjoined the Receiver from purporting to speak for CIHL (an English company) because CIHL has no connection to South Carolina—a rule of law that is equally applicable here in South Carolina. The Altrad Defendants informed the Court of that ruling because it goes to the very heart of the issues presented in their and the Charter/ESAB Defendants’ certiorari petitions. Keeping the Court informed of a ruling that impacts issues pending before the Court cannot possibly serve as a basis for a TRO.

Respectfully, the Altrad Defendants believe it is time for this overheated litigation to end. There is no personal jurisdiction in South Carolina over the Altrad Defendants (or over CIHL or Cape PLC, for that matter). Likewise, there is no lawful basis for a South Carolina court to appoint a receiver over an English company that has no assets in and no connection to this state. These are points of hornbook law, either of which provides a simple solution to this case, and the Altrad Defendants respectfully request that the Court grant certiorari and resolve this matter.

Respectfully submitted,

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