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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. 2024-001423, 2024-001499, and 2024-000916

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

REPLY IN FURTHER SUPPORT OF MOTION TO STRIKE PETITIONERS' SUPPLEMENTS TO PETITIONS FOR WRIT OF CERTIORARI AND SUPPLEMENTAL APPENDIX AND REPLY TO PETITIONERS' MEMORANDUM IN OPPOSITION TO THE EMERGENCY MOTION FOR SUPERSEDEAS TO PROTECT AND ENFORCE JURISDICTION AND FOR TEMPORARY RESTRAINING ORDER

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"), under threat of imprisonment, fines, and seizure of personal assets by Petitioners,[1] hereby files this Reply in further support of the Receiver's Motion to Strike Mohed Altrad and Altrad Investment Authority S.A.S.'s (referred to herein as "Petitioners") November 24, 2024 Supplement to the Petitions for A Writ of Certiorari and Supplemental Appendix (Volume I and II) filed in Appellate Case Nos. 2024-000916 and 2024-001499 and Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.'s (Charter Third-Party Defendants') November 27, 2024 Supplement to the Petitions for A Writ of Certiorari filed in Appellate Case Nos. 2024-000916 and 2024-001423, as well as in further support of the Receiver's Emergency Motion for Supersedeas to Protect and Enforce Jurisdiction and for Temporary Restraining Order.

PETITIONERS' SUPPLEMENTAL FILINGS ARE NOT PROPER UNDER THE SOUTH CAROLINA APPELLATE COURT RULES

The South Carolina Appellate Court Rules do not allow a party to supplement a petition for a writ of certiorari. Rule 242, SCACR. This appeal of a South Carolina circuit court order was fully briefed when Petitioners attempted to interject a separate, newly obtained order from the United Kingdom ("U.K.") into the otherwise completed record. Petitioners' Return[2] provides no

[1] As will be explained in more detail below, because Petitioners' continue to pursue threats of imprisonment, fines, and seizure of assets of the Receiver and the Receiver's attorneys, the Receiver is submitting this Reply himself as an officer of the Court and as the court-appointed Receiver pending this Court's decision on the request to enjoin Petitioners and their counsel from threatening and attempting to execute criminal threats against the Receiver and members of South Carolina bench and bar.

[2] The Receiver refers throughout to the Petitioners' Return for the sake of simplicity because the Charter Third-Party Defendants merely incorporated by reference all arguments made in the Petitioners' Return. Charter Ret. at p. 3, Appellate Case Nos. 2024-000916 and 2024-001423. However, all arguments herein are raised as to the Charter Third-Party Defendants' Return as well.

explanation under the South Carolina Appellate Court Rules as to how a party can "supplement" an already-briefed Petition for Writ of Certiorari with new arguments and submit hundreds of pages of material that was never presented to the circuit court or the Court of Appeals in conjunction with a pending appeal from an interlocutory order.[3] No such mechanism exists in our rules. Petitioners argue this Court should take judicial notice of their "supplement" and cite Rule 201(b), SCRE, explaining "that courts can take judicial notice of facts that are 'not subject to reasonable dispute.'" *Id.*; Rule 201(d). However, given that Petitioners have been unwilling to engage in discovery in the case or provide any witnesses for depositions and, as such, refused to

[3] The nearly 16 interlocutory appeals that Petitioners filed in this case have included (1) scheduling orders, (2) discovery orders (some of which Petitioners unilaterally misnamed or mischaracterized in an effort to circumvent the rules barring the immediate appealability of discovery orders), and (3) orders denying motions to dismiss or dissolve the Receivership. All of these appeals have been accompanied by Petitioners' refusals to participate in discovery. As the Receiver noted in his Return to Petitions for Certiorari, "In addition to filing waves of meritless appeals and petitions for certiorari, Petitioners have stated in no uncertain terms that they will not participate in the underlying case in any way, shape, or form, in a transparent attempt to avoid trial." *See*, 9/4/2024 letters from Vic Rawl and Todd Carroll, attached as Exhibit B to the Return to the Petitions for Certiorari in Appellate Case Nos. 2024-001423, 2024-0001497, 2024-001499. Not content with refusing to participate in the underlying case, the current owners and operators of Cape (*i.e.*, Mohed Altrad and Altrad Investment Authority S.A.S.) threatened to seek an in-junction against the Receiver in the United Kingdom. *See* 8/30/24 Winston letter, attached as Exhibit C to the Return to the Petitions for Certiorari in Appellate Case Nos. 2024-001423, 2024-0001497, 2024-001499. Subsequently, on September 9, 2024, Cape Intermediate Holdings Limited and a Bailiwick of Jersey entity currently known as Cape PLC instituted an action in the High Court of Justice Business and Property Courts of England and Wales seeking to enjoin Peter D. Protopapas *personally* (not in his capacity as Receiver), from fulfilling his court-appointed duties and obligations charged by the Asbestos Docket Chief Judge, South Carolina Chief Justice Jean Hoefer Toal (Active Ret.) on March 16, 2023. These proceedings violate the Receivership Court's Order of Appointment, and the *Barton* doctrine, which was just recently reaffirmed by the Fourth Circuit in another case involving this very Receiver in another receivership as well as some of the same counsel representing Petitioners in this appeal. *See Protopapas v. Travelers Cas. & Sur.* Co., 94 F.4th 351, 360 (4th Cir. 2024)." *See* Return to Petitions for Certiorari at n.3, Appellate Case Nos. 2024-001423, 2024-001497, 2024-001499)

participate in any fact-finding exercise in South Carolina, these "facts" are subject to reasonable dispute.

Undeterred by court rules, Petitioners now seek to "inform" and instruct this Court to recognize and enforce a foreign-injunction order which Petitioners were unable to obtain through the United States judicial system and which, in any event, is not binding on any court in the United States. Even now, as this Court considers the Receiver's Motion to Strike Petitioners' November 2024 Supplements and the Receiver's Emergency Motion for Supersedeas and Temporary Injunction, Petitioners have filed two (2) additional Petitions for Writ of Certiorari to which they maintain a reply may not be presented absent threat of imprisonment, fine, and seizure of assets. *See* Appellate Case Nos. 2024-002114, 2024-002116 and 2024-002117. Petitioners contend the Receiver "has no standing to file anything" in this Court in response to those new petitions, the pending motions, or their four other pending petitions for a writ of certiorari. Return p. 3 n.1.

In complete abrogation of United States civil and criminal laws, late last week, the Receiver received correspondence from the London law firm Signature Litigation, LLP alleging the Receiver *personally* owes Petitioners' subsidiary £3,714,452 in attorney fees and costs, which appears to be related to the unilateral action Petitioners' subsidiaries filed against him in London *in his personal capacity* for fulfilling his court-appointed duties here in South Carolina. The correspondence threatens to petition the court in London for even higher costs if the Receiver does not capitulate to their demands to abandon his court-appointed position in South Carolina and the responsibilities and duties associated therewith *and* agree to pay £1,857,226 (half the amount) immediately. Ex. A, December 19, 2024 Letter to Receiver. To be clear, in addition to the amount now being demanded, the Altrad-owned entity and its attorneys are also continuing to rely on a

penal notice, which threatens to impose these costs or others on the Receiver, as well as any attorneys who dare sign any filings in this case (the "Penal Notice").

This Penal Notice and its related threats do not stop at the Receiver and his attorneys but includes "[a]ny person who knows of this order and disobeys this order or does anything which helps or permits any person to whom this order applies to breach the terms of this order." Ex. B, November 22, 2024 Penal Notice and Sealed Order. By the express terms of this Penal Notice, South Carolina judges and justices do not appear to be excluded from this threat should they rule against Petitioners.

PETITIONERS' MISREPRESENTATIONS TO THE COURT

This case, along with numerous other receivership cases arising from the Asbestos Docket, features a tortured procedural history. Marked by the Petitioners' improper filings, forum shopping, duplicitous arguments and serial appeals, these cases present many challenges to the parties and the courts. Recently, Petitioners in this case have levied unprecedented attacks on South Carolina judges, their court-appointed Receiver and his lawyers, and the South Carolina court system itself.

In their Response to the Receiver's Emergency Motion for Supersedeas to Protect and Enforce Jurisdiction and for Temporary Restraining Order, Petitioners make many factually incorrect and misleading representations to this Court. If allowed to proceed unchecked, this lack of candor, improper legal maneuvering, and gamesmanship not only will provide a license to continue such behavior, but will also have a chilling effect on any court, court-appointed Receiver, or attorney that undertakes the task of taking on corporate malfeasance and unlawful concealment of assets to avoid legal obligations.

1. **Despite representations to the contrary, the Altrad Investment Authority S.A.S. wholly owns and controls the U.K. entities that**

secured the U.K. order, and the CEO of one Petitioner serves as director of the U.K. entities.

In their Return to the Receiver's Emergency Motion, Petitioners advance a fiction that they are not directing, and have no control over, Cape Intermediate Holdings Ltd. ("CIHL") which has brought the litigation against the Receiver in London. Petitioners double down on this argument on page 10 of their Return stating that the Receiver "ignores the basics of corporate separation" among "the various companies." This is inaccurate.[4]

The truth is that the Altrad Third-Party in this South Carolina case Defendants (Mohed Altrad and Altrad Investment Authority S.A.S.) own and control the entities bringing the litigation against the Receiver in London. Altrad Investment Authority S.A.S. is a French company owned by Mohed Altrad, and both have been sued in this case in South Carolina. In their filings in this Court, where they seek to distance themselves from the London litigation, Petitioners insinuate that they are entirely separate from the entities responsible for securing the judgment against the Receiver in England. Again, not true. In fact, both of the plaintiffs in the London litigation are wholly owned subsidiaries of Petitioner Altrad Investment Authority S.A.S.[5] The 2022 Annual Report for CIHL (a plaintiff in London) makes clear that Altrad Group (the trade name of the common enterprise of industrial-services companies led by Mohed Altrad [6]) manages CIHL. This

[4] Despite feigned ignorance of the happenings in the U.K., Petitioners' attorneys were able to acquire and file the November 22nd U.K. judgment 27 minutes before the Receiver was even served with it. (Ex. C, November 22, 2024 NEF Notice of Filing marked 12:34 PM and Ex. D, November 22, 2024 service email from Signature to Receiver at 1:01 pm). Petitioners' arguments that they do not exercise control over Cape and the asbestos related liabilities associated with their acquisition of Cape are not unique to this case and are not true as has been documented worldwide.
[5] *See* Ex. E, 2023 Annual Report of Altrad UK Ltd at p. 22 which lists Cape PLC and CIHL as Subsidiary Undertakings and Ex. F, 2022 Annual Report of Cape Intermediate Holdings Limited.
[6] *See, e.g.*, Altrad Terms of Use Webpage, https://www.altrad.com/en/legal-information.html (identifying Petitioner Altrad Investment Authority S.A.S. as the primary "Company" of the "Altrad Group" of companies); Altrad "Our History" Webpage, https://www.altrad.com/en/our-history.html (noting in 1985 the "Altrad group [was] founded" and in 2015–17 "triple[d] its size in just two years" through a series of acquisitions, including of "the British leader Cape plc").

fact is also contained in the company's Strategic Report for the year ended August 22, 2022, in which the company's director, Ran Oren, stated in relevant part:

> The Board of Altrad Group manages risks at a group level and is committed to enhancing the group's management capability.

Id. at 4. The company's Notes to the Financial Statements make the control element even clearer:

> The ultimate parent undertaking and **controlling** party is **Altrad Investment Authority SAS**.

Id. at 24 (emphasis added).

Additionally, Ran Oren (the director mentioned immediately above and the same person who initiated and provided the sworn testimony in the London proceedings), serves as both the CEO of Petitioner Atrad Investment Authority S.A.S and the sole Director of CIHL and Director of Cape PLC.[7] The "basics of corporate separation" referenced by Petitioners do not exist here.

Further, Petitioners' representation that there is no jurisdiction over the Third-Party Defendants in South Carolina is incorrect. First, these arguments were raised to the circuit court in a motion to dismiss. The circuit court denied them, allowing the case to move forward past the initial Rule 12 stage though Petitioners refuse to participate in discovery.

More to the point, the Third-Party Defendants (including their predecessors), through their alter ego partner in the United States, North American Asbestos Corporation, flooded the United States and South Carolina specifically with asbestos all the while knowing – and going to great lengths to hide – that asbestos could kill.[8] Their asbestos exposed South Carolinians in hundreds if not thousands of job sites *in South Carolina*. Instead of proceeding to defend this litigation, on

[7] *See* Ex. G, December 11, 2024 Third Witness Statement of Ran Oren at paragraph 2.
[8] The Circuit Court for the Second Judicial Circuit for Barnwell County in *In re Asbestos Cases*, No. 78-CP-06-105, considered affidavits and legal briefing on these points and denied North American Asbestos Corporation's Motion to Dismiss for lack of in personam jurisdiction. *See* Ex.H.

the merits, Petitioners have instead stymied the underlying proceedings and appealed every interlocutory order issued by the circuit court and continue to cloud court records with inaccurate information and purported legal conclusions that have been repeatedly rejected by our courts.

Further, Petitioners and Third-Party Defendant ESAB Corporation ("ESAB"), have or recently have had other connections to South Carolina, including through a subsidiary and predecessors.[9] The company website of Altrad RMD Kwikform, a subsidiary of Altrad Group, lists a branch office located at 301 Webb Road, Williamston, South Carolina 29697.[10] The South Carolina Workers Compensation Commission indicates that as of September 5, 2024, RMD Kwikform North America Inc. had workers compensation insurance coverage applicable in South Carolina issued by Zurich American Insurance Company.[11]

ESAB had deep connections to Florence, South Carolina for decades until the company moved its headquarters during the pendency of this action. As of 2011, ESAB employed "523

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[9] The Receiver filed a notice on May 9, 2024, detailing how (on the one hand) ESAB Corporation is a Third-Party Defendant incorporated in 2022 as a vehicle to spinoff other Charter Third-Party Defendants (that were alter egos of Cape) into a publicly traded entity, and how (on the other hand) ESAB Corporation denies any relevant connections to South Carolina based on a technicality of that recent incorporation, while ignoring that one spun-off subsidiary—and the principally operating "ESAB" branded company over the last three decades—operated its principal place of business in South Carolina, including in the 1990s while an affiliate of the Receivership entity (then named Cape PLC, n/k/a Cape Intermediate Holdings Ltd.). *See generally* Notice of Incomplete Statements Regarding ESAB Corporation; *see also, e.g.*, ESAB Corporation Celebrates 120th Anniversary (Sept. 12, 2024), https://esabcorporation.com/newsroom/esab-corporation-celebrates-120th-anniversary/ (celebrating "120th anniversary" of ESAB Corporation, despite pleading in this action separateness from The ESAB Group Inc., the primary operating company of the ESAB Group with a prior principal place of business in South Carolina); Ex. I, Charter PLC Annual Report (May 3, 1997), at Cape_Receiver_00182172, -00182214 (identifying "ESAB Corporation" as the only ESAB subsidiary in the U.S., when ESAB operated principally out of Florence, and also detailing the sale of Cape PLC from the Charter/ESAB Group of companies).

[10] Altrad RMD Kwikform: Contact Us, https://www.rmdkwikform.com/us/contact-us/# (last accessed Dec. 20, 2024).

[11] Ex. J, South Carolina Workers Compensation Commission WC Coverage Verification Portal page for RMD Kwikform North America Inc.

people at its Florence facilities, which include[d] a manufacturing plant, executive offices, the company's information technology department, and a substantial portion of the company's sales, engineering, and research and development divisions"; the company had "paid more than $6 million in taxes to the State of South Carolina and Florence County"; and the company "derive[d] a substantial portion of its total revenue from its operations and facilities in Florence, South Carolina," including "generat[ing] approximately $225 million in revenue from its Florence operations" from 2008 through the first half of 2009.[12] To this day, reflecting its longstanding presence in South Carolina, ESAB Group's Terms and Conditions of Sale require its buyers to "expressly submit[] to the exclusive jurisdiction of the state and/or Federal courts located in Florence, South Carolina with respect to all lawsuits arising under or in connection with this Offer."[13]

2. Petitioners inaccurately argue that the *U.K Adams* decision controls here.

Petitioners advance an argument that a court in England already considered and disposed of the legal theories the Receiver will present in the action currently pending in the circuit court below. The cases are very different, and the *Adams* decision does not even address, let alone control, the issues raised by the Receiver's South Carolina case.

As previously presented to this Court, *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA), involved United States asbestos plaintiffs who went ***to England*** to enforce a Texas judgment ***in England*** pursuant ***to English law*** such that as company ***in England*** would be compelled to pay

[12] Ex. K, Decl. of Neil C. Schemm, *The ESAB Grp., Inc. v. Arrowood Indem. Co.*, No. 4:09-cv-01701, ECF No. 25-2, at ⁋⁋ 10–14 (July 17, 2009).

[13] ESAB Terms and Conditions of Sales (accessed Dec. 20, 2024), https://esab.com/us/nam_en/terms-and-conditions-of-sales/ (also referencing the South Carolina Uniform Commercial Code as a source for definitions).

the Texas judgment.[14] This South Carolina Receivership action does involve United States plaintiffs, but any similarity to *Adams* stops there. The Receiver has not and does not intend to go to England to seek any relief. Any future judgment from the South Carolina court will not be enforced in England. And for many of the Third-Party Defendants, a judgment would be enforced in the United States. The entirety of this Receivership action has been and will be governed by United States law – specifically, South Carolina law.

Justice Mann, the author of the U.K. order, pays great reverence to the *Adams* case, but he never addresses this litigation reality: if a ***South Carolina*** court determines that it has jurisdiction over Petitioners, and if the Receiver prevails ***in South Carolina*** on its equitable claims against them pursuant ***to South Carolina law***, and if the enforcement of any judgment against Petitioners would take place ***in South Carolina*** (or any place other than in England), what then? The notion that *Adams* precludes a remedy is nonsense. Would the reverse be true? If an English court determined that an action filed in England satisfied all English legal requirements such that a South Carolina corporation were liable in England to English plaintiffs, would the South Carolina court have primacy to block a remedy in England? Of course not. Procedurally and factually, the *Adams* case has no relevance in this case under these unique circumstances.

Moreover, the claims against Cape over 30 years ago in *Adams* are not identical to the claims being made in the Receivership action. The expert evidence in this case was not presented in *Adams*. The facts here are more fully developed and align with this new expert testimony. While it is true that alter ego is a relevant theory in the Receivership case, South Carolina law on alter ego and corporate separateness in 2024 is materially – even radically – different from the English

[14] Attachment to Receiver's Motion to Strike Supplements to Petition for Writ of Certiorari and Supplemental Appendix at 14.

law that *Adams* applied. The amalgamated enterprise cause of action was only recently endorsed in South Carolina in 2018 in *Pertius v. Front Roe Restaurants, Inc*, 423 S.C. 640, 817 S.E. 2d 273 (2018)), and its parameters continue to be established and may further be refined with this case. Even in the face of Petitioners' refusal to participate in discovery in any way, this Receiver has established an expansive record on amalgamation in the case below – and it is solely up to the South Carolina court to determine if those facts satisfy South Carolina law.

Adams is simply not binding here – or on any United States court. *Adams* is, in fact, contrary to decisions by other state and federal courts across the United States that have considered evidence similar to what was presented in *Adams*. The notion that this Court is bound by a case decided in a different country over 30 years ago based on different evidence and different claims against different defendants is misguided. Petitioners' attempt to insert the *Adams* decision and the findings from their alternate proceedings in London into a fully briefed appeal in this Court is improper.

The Receiver should be permitted the opportunity to try its South Carolina alter ego and amalgamation of interest case against the parties named in the third-party complaint.

3. The Receiver acts pursuant to the terms of the Circuit Court's Appointment Order.

Petitioners assert that the recent English order "confirms that the receivership appointment was illegitimate and without authority from the outset." Return to Mtn. to Strike at p. 6. This statement, as well as the Petitioners' continued contention that the Receiver "has no standing to file anything" in this Court in response to pending appeals, illustrates the necessity of the Receiver's recent Emergency Motion.[15] Return to Mtn. to Strike at p. 3 n.1.

[15] Petitioners' argument that the Receiver does not even try to meet the basic elements of an injunction analysis (Return to Receiver's Emergency Motion, pp. 12-13.) is disingenuous. For instance, the Receiver did not include a thorough analysis of irreparable harm in his Emergency

Petitioners have attempted to supplant the authority of this Court—the highest court in this state and the only court with the authority to review the orders of this state's courts—with the decision of a foreign court which has no basis to evaluate a South Carolina receivership. It is for this reason that *the first English Justice* to review Petitioners' arguments, and which Petitioners notably omitted from their filings "informing" this Court, cautioned:

> The [Receiver] defendant is not participating in English proceedings; he maintains that the South Carolina Courts have exclusive jurisdiction over his receivership and he has launched various applications to the South Carolina Courts in relation to the English proceedings. I have heard today that, one of those motions which he has issued was granted overnight by Toal J. She has confirmed that all of the Defendant's actions have, in the view of the South Carolina Court, been entirely proper and within the authority which had been conferred by the South Carolina Court. The claimant is not participating in the South Carolina proceedings, so there is a standoff.
>
> This sort of standoff is not uncommon when international legal systems bump up against each other. **What is important is that, when they do, the English Court always acts with deference and respect to the other court and it always had regard to the principle of judicial comity.**[16]

Petitioners would have this Court believe that the Receiver advances his own agenda by inviting the filing of actions against Cape, advancing a false narrative that the Receiver is a rogue person acting without any authority. To the contrary, the Receivership court has confirmed the Receiver's actions have been "conducted within the appropriate scope of his appointment."[17]

Further, Petitioners also claim that the Receiver is trying to run an active foreign company. Not true. To the contrary, the Receiver is attempting to marshal assets within the power of the South Carolina Receivership court. Despite Petitioners' arguments, the Receiver has not attempted

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Motion because it is self-evident. The irreparable harm is clearly apparent in the fact that the Receiver and his attorneys cannot participate in this litigation and respond to the serial appeals filed by Petitioners without exposing themselves to the threats of imprisonment, fines, and seizure of personal assets.

[16] Ex. L, November 6, 2024 Order at p. 4 (emphasis added).

[17] Nov. 1, 2024 Clarification Order, attached as Ex. 5 to Emergency Motion (filed Dec. 13, 2024).

to reach assets outside of the South Carolina Court, and in the third-party complaint, only seeks declarations as to the equitable impact of the activities of the third-party defendants.

Petitioners seek to vilify the Receiver by highlighting suits that have been brought in Receiverships against various law firms. Most of such law firms are national counsel that have refused to provide production of documents and historical litigation files containing information about the entities in Receiverships, whose assets the Receiver has been charged to marshal, or, in some cases, refused to recognize validly issued subpoenas.

4. Despite Petitioners' assertions, they continue to threaten penal sanctions against the Receiver by using a second, *sealed* version of the submitted U.K. order.

Petitioners dismiss as wild conjecture that anyone has threatened the Receiver or his lawyers with arrest.[18] To the contrary, the Petitioners' U.K. subsidiaries, using a ***sealed*** version of the order submitted to this Court, have threatened that if the Receiver or any lawyer who represents the Receivership continues to act pursuant to the South Carolina Receivership order, they "may be held in contempt of court and may be imprisoned, fined or have [their] assets seized."[19]

Petitioners' arguments that no such threats were made are simply misrepresentations. Importantly, two versions of the November 22 U.K. order that is the subject of the Supplemental Filing exist. One, which Petitioners filed with this Court, starts with the "Order" on page 1. *See* Supp. App. 001. Second, the ***sealed*** Order that Petitioners' U.K. subsidiaries have circulated to the Receiver and its counsel, contains the following Penal Notice on page 1:

> If you the defendant disobey this order you may also be held in contempt of court and may be imprisoned, fined or have your assets seized. **Any person who knows of this order and disobeys this order or does anything which helps or permits**

[18] *See* Return to Receiver's Emergency Motion at 12 ("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' . . . is untrue on its face.").
[19] See Ex. B.

> **any person to whom this order applies to breach the terms of this order** may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.[20]

The body of the "Order" begins on page 2 of the *sealed* version of the order. Petitioners failed to file with this Court the final, ***sealed*** version of the U.K. order which contains the Penal Notice.

The intent of Petitioners, through their U.K. subsidiaries, to have the Penal Notice in the ***sealed*** U.K. order enforced against the Receiver and his attorneys was made clear in a letter to the Receiver's counsel at the Morgan Lewis law firm enclosing "an updated copy of the Order with a **Penal Notice** at the front."[21] The letter further states, "Please read the **Penal Notice** carefully and confirm that you will comply with the terms of the Order and that you will not going forwards assist or act for Mr Protopapas in any way that would breach the terms of the Order or that would facilitate the breach."[22]

Essentially, Petitioners—by and through their U.K. subsidiaries undertaking forum shopping on an international level—have preemptively and extraterritorially appealed this Court's forthcoming ruling – on whether the decision by a South Carolina court to appoint a receiver in South Carolina to marshal assets in South Carolina is immediately appealable in South Carolina – to a court in London, which has said the South Carolina Receivership is invalid. And, if the Receiver and his attorneys participate in this appeal or any other South Carolina litigation relating to this Receivership, or if this Court rules against Petitioners in the *seven* cases pending before it, they will be subject to penal consequences including imprisonment, fines, and seizure of assets.

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[20] Ex. B at page 2, Sealed Order (emphasis added).
[21] Ex. M, December 10, 2024 Letter from Signature Litigation to Morgan Lewis, (emphasis added), See also Exhibits 7, 9 and 10 (Cease and Desist letters issued to Morgan Lewis, Smith Robinson and Gallivan White & Boyd), attached to the Report of the Receiver filed as an attachment to the December 6, 2024 Motion to Strike Petitioners' Supplements to Petition for Writ of Certiorari and Supplemental Appendix.
[22] *Id.* (emphasis added).

Petitioners declare that a ruling by this Court must be in their favor by default[23] because Petitioners will criminally prosecute the Receiver and his attorneys if they oppose the seven pending petitions for writ of certiorari.

This is not the first time counsel for Petitioners has represented to this Court that "special and important reasons" existed to justify this Court's premature review of a receivership matter. In the *Childers* appeal the same counsel for Petitioners in this case urged the Court to accept certification of a case pending in the Court of Appeals involving the Payne & Keller receivership by stating: "Granting the Motion for Certification would ensure that this appeal is resolved efficiently and expeditiously, and it would provide much-needed guidance to the Bench and Bar regarding legal errors that are pervasive within the Asbestos Docket." Travelers' January 11, 2024 Joinder at pp. 2–3, Appellate Case No. 2023-000727. Counsel asked the Court for guidance on the issue, and the Courts gave it. Unfortunately, the same counsel's other clients are not following that guidance here.[24] This Court ruled in *Childers*, stating that an order denying a motion to dismiss and dissolve a receivership was *not* immediately appealable. In the *Childers* case, both the Court of Appeals and this Court considered and rejected arguments that an order denying a motion to dismiss and dissolve a receivership was immediately appealable under section 14-3-330(4) of the

[23] In fact, in one of the two Petitions for Writ of Certiorari filed by the Petitioners on December 16, plainly states their goal: "This [UK injunction] must necessarily include [and enjoin] any responsive filings to this petition for writ of certiorari and any other representations to this Court that he speaks on behalf of CIHL." (Altrad Pet. at p. 8, Appellate Case No. 2024-002114).

[24] The undersigned is reminded of this Court's instruction from March 9, 2021 to some of the same counsel as are present here: "We, in turn, expect the parties and their attorneys in this and any other case to fully cooperate with the trial court in order to ensure the case is tried or otherwise disposed of in a timely manner. Any action taken for the purpose of delaying the disposition of this case will, under appropriate circumstances, merit the imposition of sanctions under Rule 269, SCACR." See March 9, 2021 Order, *Finch v. United States Fidelity and Guaranty Co., et. al*,, Appellate case number 2020-001670.

South Carolina Code. Now, Petitioners and the same counsel wash, rinse, and repeat the rejected arguments despite the clear guidance given by our Courts.

CONCLUSION

The supplements to the Petitions for Writ of Certiorari and supplemental appendix are procedurally improper and should be stricken. The conduct of Petitioners undermines the primacy of the South Carolina court system's role in interpreting issues of South Carolina law. For these reasons, the Receiver respectfully requests the Court grant his Motion to Strike and Emergency Motion for Supersedeas to Protect and Enforce Jurisdiction and for Temporary Restraining Order.

Respectfully Submitted,

By: s/ Peter D. Protopapas
Peter D. Protopapas, Receiver
SC Bar 68304
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111
pdp@rplegalgroup.com

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