

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

**Jan 27 2025**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jean H. Toal  
Acting Circuit Court Judge

Appellate Case No. 2024-002114

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.

---

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI  
(MODE OF TRIAL APPEAL)

---

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll  
S.C. Bar No. 74000  
todd.carroll@wbd-us.com  
Kevin A. Hall  
S.C. Bar No. 15063  
kevin.hall@wbd-us.com  
M. Elizabeth O’Neill  
S.C. Bar No. 104013  
elizabeth.oneill@wbd-us.com  
1221 Main Street, Suite 1600  
Columbia, SC 29201  
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and Altrad  
Investment Authority SAS*

January 27, 2025

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

ARGUMENT ..... 4

    I. This order is immediately appealable because it effects jury trial rights to which the Altrad Defendants (and all other defendants) are entitled. .... 4

    II. This case has fundamental distinctions from the ACL and Atlas Turner appeals pending before the Court. .... 7

CONCLUSION..... 10

**TABLE OF AUTHORITIES**

**Cases**

*First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 445 S.E.2d 446 (1994) ..... 4  
*Floyd v. Floyd*, 306 S.C. 376, 412 S.E.2d 397 (1991)..... 6, 7  
*Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 247 S.E.2d 315 (1978)..... 7  
*Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997) ..... 7  
*Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015) 3  
*Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 787 S.E.2d 485 (2016)..... 1

**Statutes**

South Carolina Code § 14-3-330(4)..... 1

**Rules**

Rule 14(a), SCRCP ..... 5  
Rule 205, SCACR..... 2  
Rule 208(b)(6), SCACR..... 11  
Rule 240, SCACR..... 11  
Rule 38(a), SCRCP ..... 6

## INTRODUCTION

This case demands the Court's considered attention because of what can only be regarded as an extraordinary and unconstitutional overreach at the circuit court level. The circuit court has unconstitutionally reached outside of the state's borders and, under the guise of a receivership, has attempted to seize control of an active, solvent English company that has no operations or property in South Carolina. It is unprecedented. It is unconstitutional. There is nothing appropriate or lawful about the circuit court's extraterritorial reach. To borrow this Court's phrasing, the circuit court's attempt to authorize a receiver to reach beyond South Carolina and to meddle in the business of an active English company is "shocking and indefensible." (Order (Jan. 16, 2025).)

This appeal further highlights the unprecedented nature of what's happening below. In response to the circuit court's order purporting to appoint a receiver over Cape Intermediate Holdings Limited, the Altrad Defendants (and several others) immediately appealed that appointment order, precisely as authorized by South Carolina Code § 14-3-330(4). Through that immediate appeal, the Altrad Defendants (and several others) respectfully and rightfully requested that the Court of Appeals faithfully apply South Carolina law and end this unconstitutional receivership before it was able to create international chaos by unlawfully interfering with that English company's business affairs, its legal relationships, and decades of English (and South Carolina) precedent that exposes the complete falsity of the "claims" the Receiver is presenting in this case. (Appellate Case No. 2024-001499.)

Because Appellate Court Rule 205 divests the circuit court of jurisdiction over every matter that is impacted by an appeal—including "inchoate" issues that could be affected by the order on appeal, *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 539, 787 S.E.2d 485, 496 (2016) (Pleicones, C.J., concurring in result)—the Altrad Defendants have diligently held firm to their

law-based objection to anything happening below until this Court has a chance to quash this patently unlawful situation. (Appellate Case No. 2024-000916.) This isn't some contrived argument—it's exactly what South Carolina law requires. *See* Rule 205, SCACR (providing that after service of a notice of appeal, “the appellate court shall have exclusive jurisdiction over the appeal”) (emphasis added).

In response to their adherence to Rule 205's unambiguous jurisdictional guardrails, the Altrad Defendants have been wrongly punished by the circuit court through contempt orders. The Receiver's “counter-statement” makes this sequence obvious, as he mocks the Altrad Defendants' arguments as a strategy to “delay” and “avoid trial” and “wast[e]” resources and “forum shop” and make “piecemeal appeals,” all because the Altrad Defendants—an individual French citizen and a French company, neither of which are even subject to jurisdiction in South Carolina—are daring to follow the law, preserve their issues, and protect their rights. (Opp. at 2, 3, 9.)

The irony of the Receiver's argument is that if he and the circuit court had simply abided by the clear jurisdictional restrictions of Rule 205, there would be no “piecemeal” appeals; this situation would have been stopped from the outset while this Court reviewed their unconstitutional attempt to reach beyond South Carolina's borders and put a South Carolina receiver in charge of CIHL's affairs. The Receiver's chiding of the Altrad Defendants (and others) for adhering to the law, and his blaming of the Altrad Defendants (and others) for procedural problems that the Receiver himself and the circuit court's rulings have created, is undoubtedly misplaced.

What's more, the circuit court—at the Receiver's urging—marched forward with litigation despite having no jurisdiction to do so. In the order at issue in this certiorari petition, the circuit court indicated that it would hold a bench trial even though the Receiver himself concedes that his

claims arise, at least in part, in law (not equity), and even though the Receiver seeks to recover money damages (“billions” of dollars, as he alleges).

The Receiver has taken extraordinary steps to avoid this Court’s necessary review of what’s been happening below. In furtherance of this appellate-avoidance strategy, the Receiver’s argument in opposition to certiorari review is based on nothing more than a superficial characterization of the circuit court’s order as a “scheduling order.”

The law doesn’t allow a lower court’s order to avoid appellate review based on a label; instead, substance is what matters. *See, e.g., Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (finding that an order was immediately appealable despite its “bifurcation” label and reiterating that “[o]ur review of trial court orders is not constrained by how the order is styled”). Despite the Receiver’s straining, and despite the circuit court’s labeling, the order at issue in this appeal is unmistakable in its effect: it strikes the Altrad Defendants’ jury trial rights. This order is both immediately appealable and must be immediately appealed as a matter of long-settled South Carolina law, and it gives this Court yet another reason to take up this appeal (as well as all others filed by the Altrad Defendants and their co-appellants) and to end this illegal receivership.

Finally, none of the legal issues and background underlying the Altrad Defendants’ instant certiorari petition—nor the myriad constitutional, substantive, procedural, and logical defects that infect this case and the CIHL (and Cape PLC) receivership—are set to be heard by this Court during its February term. In its January 16, 2025 Order, the Court indicated that it would “hear” arguments regarding the unconstitutionality of the CIHL receivership “during its February term of court and resolve [them] after oral argument”; however, the issues presented here are distinct from the insurance-based issues presented in the Asbestos Corporation Limited and Atlas Turner

receiverships. *This case involves no insurance issues.* And despite numerous chances, the Receiver has never even attempted to defend the unconstitutionality of the CIHL receivership, instead weakly claiming that the impropriety of his appointment—the fountainhead error from which this entire situation flows—is neither “important” nor “relevant.” (Receiver’s Return to Cert. Pet. at 12–13 (Appellate Case No. 2024-001499).)

## ARGUMENT

### **I. This order is immediately appealable because it effects jury trial rights to which the Altrad Defendants (and all other defendants) are entitled.**

The Receiver seeks to avoid appellate review here by calling the order on appeal a “Scheduling Order” over and over again, arguing that a “Scheduling Order” cannot be appealed, and pointing to the self-serving (and misleading) headings he attaches to his claims. (Opp. at 1, 2, 3, 7, 8, 11, 15.) The sequence of this case exposes why these superficial labels are irrelevant and why this entire case is illusory.

The Altrad Defendants are purportedly third-party defendants to an asbestos personal injury case. A third-party defendant can only have derivative liability from the first-party case. *See, e.g., First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (“Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability.”).

Rule 14 specifically allows a third-party defendant to “assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff’s claim.” Rule 14(a), SCRPC. Thus, the cap on the Altrad Defendants’ potential exposure in this case is based on the *Tibbs* plaintiffs’ claim against CIHL, which could only be determined by a jury in the first instance. The legal requirement of first-party liability is the first reason why the Altrad Defendants are entitled to a jury trial, and why the circuit court’s scheduling of a “bench trial” is immediately appealable.

Neither the Receiver nor the Court of Appeals acknowledged this threshold point; even in its 15-page opposition to certiorari, the Receiver stays silent on this issue. But it fully demonstrates why the underlying order is immediately appealable.

And, most importantly, it demonstrates why what is happening here is completely unlawful: **CIHL is not a defendant in the Tibbs case**. The unconstitutional receivership that is at the heart of the Altrad Defendants' and Charter Defendants' numerous certiorari petitions was created out of whole cloth—at the Receiver's request—against an active, solvent English company that is not even a party to the case from which the appointment arises. Truly, the Receiver purports to be pursuing third-party claims on behalf of an English company that is not involved in the first-party case and that has nothing to do with the State of South Carolina.

A litigant cannot possibly claim to be a third-party plaintiff unless it is also a first-party defendant. This whole situation is obviously improper and should be stopped. But if it is allowed to proceed one moment more, the Altrad Defendants cannot have their potential exposure left open-ended; that potential exposure must first be established by a jury in the *Tibbs* case, and the circuit court ordering a “bench trial” to happen first obviously violates that mode-of-trial right. The order is immediately appealable as a matter of right accordingly.

The Receiver's return brief has no response to any of these points.

Likewise, the Receiver only seeks money damages. The Receiver's filings mask this point by affixing “equitable” labels to his claims, but he only seeks one form of relief: money damages, totaling “billions” of dollars. (*See, e.g.*, Third-Party Compl. at “Introductory Statement” (seeking “billions of dollars of past, present, and calculable future damages”); *id.* ¶ 130 (requesting that the circuit court “require that each of the [third-party defendants] to return funds that have been wrongfully diverted from meeting obligations and responsibilities in the United States, in an

amount to be proven at trial”); *id.* ¶ 136 (requesting that the circuit court “require each of the [third-party defendants] to return funds that have been wrongfully diverted from meeting Cape’s obligations and responsibilities in the United States, in an amount to be proven at trial”).) And before the circuit court, the Receiver himself conceded that his claims “sound[] in equity and law.” (Receiver’s Motion to Preadmit Exhibits as a Discovery Sanction at 2 (Apr. 3, 2024) (emphasis added).)

Creative labeling cannot carry the day. When a party seeks to recover money, a jury trial is required, irrespective of how a litigant styles its claims. Rule 38(a), SCRPC. And even if the Court believes equitable issues are lurking within the Receiver’s “claims,” a jury trial is required on the legal issues. *See Floyd v. Floyd*, 306 S.C. 376, 379–80, 412 S.E.2d 397, 398–99 (1991) (“Even in a case in equity if, during the trial of such case, any question should arise which a party is entitled to have determined on the law side of the court, such determination should be had. Where legal and equitable issues and rights are asserted in the same complaint, legal issues are for determination by a jury and equitable issues for the judge sitting as chancellor.”).

The Receiver’s return has no response to this, either.

Finally, the Court should not credit the Receiver’s posturing that the Altrad Defendants or any other defendants somehow waived their right to a jury trial or did not preserve this issue for appellate review. At no point did the Altrad Defendants concede that the first-party or third-party claims had to be heard through a bench trial.

The unavoidable facts are that the Altrad Defendants demanded a jury trial (Receiver’s App. at 133, 195), but the circuit court entered an order directing that a bench trial will happen instead. This was the first order that effected the mode of trial, and the Altrad Defendants were required by law to immediately appeal it. Only if they hadn’t appealed it would the Altrad

Defendants have actually risked waiving their jury trial right. *See, e.g., Floyd*, 306 S.C. at 379, 412 S.E.2d at 398 (reviewing on appeal an order transferring a case “to the non-jury calendar”); *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 292, 247 S.E.2d 315, 317 (1978) (reviewing on appeal an order “that the action be transferred to the equity calendar”); *cf. Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) (“Here, Client’s failure to immediately appeal the order designating this case as a non-jury matter bars his current appeal of that issue.”).

At bottom, labels are meaningless when it comes to assessing an order’s appealability, yet the Receiver’s opposition does nothing but hide behind labels. The Court should grant certiorari accordingly.

**II. This case has fundamental distinctions from the ACL and Atlas Turner appeals pending before the Court.**

As the Court is aware, there are numerous certiorari petitions pending before the Court that involve the CIHL (and Cape PLC) receiverships—the Altrad Defendants have filed five themselves, and the Charter Defendants have filed several as well. Other than involving receiverships unconstitutionally created over active foreign companies, the CIHL receivership is not identical to the ACL and Atlas Turner receiverships, which are on this Court’s oral argument schedule for February 2025. (*Cf. Order* (Jan. 16, 2025) (“The dispute giving rise to the English Court’s attempt to intervene in these matters involves the appropriate reach of the Receiver appointed by the South Carolina Circuit Court—an issue this Court will hear during its February term of court and resolve after oral argument.”).)

To be sure, all or substantially all issues involved in the Altrad Defendants’ pending petitions are unrelated to or distinguishable from those currently on the Court’s docket. The Receiver himself concedes this point:

The Receiver also agrees with Appellant’s [*i.e.* ACL’s] objection to the consolidation of this appeal involving the ACL receivership and the *Welch* appeal involving the Atlas [Turner] receivership with any other appeals pending from the *Tibbs* case involving a separate receivership, separate parties, entirely separate issues, and different procedural backgrounds [*i.e.*, all of the appeals involving the CIHL/Cape PLC receiverships].

(Receiver’s Ret. to Mot. to Consol., Appellate Case No. 2023-001461, at 2 (Oct. 21, 2024).)

Accordingly, the Altrad Defendants respectfully note that the issues presented here are **not the same** as those at issue in the ACL and Atlas Turner appeals. A non-exclusive survey of some of the material distinctions include:

1. **No Insurance at Issue.** The circuit court has stated in repeated hearings that it created the receivership scheme that permeates the Asbestos Docket to compensate plaintiffs through legacy insurance policies for which premiums had been paid by the defunct companies being placed in receivership. This “historic insurance coverage” background has animated numerous receivership matters, including the ACL and Atlas Turner appeals that are on the Court’s February docket (even though ACL and Atlas Turner are not defunct). But there are no insurance interests in play in this case: no carriers, no policies, no coverage questions, no insurance implications at all. Rather than attempting to seize “insurance assets” from CIHL, the Receiver here is attempting to seize actual assets (along with corporate decision-making authority and attorney-client relationships) away from CIHL. The complete absence of any insurance-related issues is a fundamental distinction between this situation and the ACL/Atlas Turner matters.

2. **Receivership Arises from Different Case.** The Atlas Turner and ACL receiverships were created in the respective cases from which those appeals arise (*Welch* and *Tibbs*). By contrast, this situation arose through a receivership appointment in *Park* over Cape PLC, which was then modified to create a brand-new appointment over CIHL in this case—even though CIHL isn’t even a party to this case. The impropriety of the initial appointment in *Park*,

the Receiver's unlawful movement of his appointment out of the *Park* case into this one, and the unlawful mutation of that appointment into one over CIHL, and the unlawful (and incomprehensible) appointment of a receiver over CIHL in this case to which CIHL isn't a party are all dispositive procedural differences between this case and the ACL/Atlas Turner appeals.

3. **No Service, Appearance, or Notice.** In the Atlas Turner and ACL cases, those entities acknowledge that they were served with process and appeared before the circuit court prior to being placed in receivership. But neither Cape PLC nor CIHL were ever served with process of any then-operative pleading, neither made any appearance, neither were given due notice of any prospect of being placed in receivership, and neither has been given due process required by federal or state law.

4. **No Personal Jurisdiction.** The circuit court's perceived avenue for exercising jurisdiction over Atlas Turner and ACL derived from the "insurance" nature of those cases. No such avenue exists here because there is no insurance policy involved. Instead, the circuit court purported to assert personal jurisdiction over the Altrad Defendants—an individual French citizen and a French company—based on an "alter ego" argument that fails as a matter of settled law.

5. **Standalone Constitutional Violations.** The circuit court and Receiver's actions below—at every turn, and underpinning each petition for certiorari review—violate numerous protections under both the United States and South Carolina Constitutions. As the Altrad Defendants have detailed in the various petitions with this Court, the actions here violate **at least** the Commerce Clause, the Due Process Clause, the Equal Protection Clause, the Takings Clause, and the Excessive Fines Clause. Such constitutional violations can only be assessed on a case-by-case, but the Receiver has never even attempted to defend what's happened (and continues to

happen in violation of Rule 205) below. The Court should not confuse the Receiver's actions regarding CIHL with its pending appeals involving Atlas Turner and ACL.

Because this case is separate and distinct from the appeals pending on the Court's February docket, as the Receiver has asserted and acknowledged to this Court as referenced above, the Altrad Defendants respectfully note that this case is not currently scheduled to be heard by the Court during its upcoming term.

### **CONCLUSION**

The Court should grant this petition, as well as all others presented by the Altrad Defendants and the Charter Defendants; void the "bench trial" orders below; and vacate this unconstitutional receivership and dismiss this matter, as explained in the Altrad Defendants' filings in Appellate Case Nos. 2024-000916 and 2024-001499. Respectfully, nothing in the ACL or Atlas Turner appeals scheduled for February oral argument changes the required result here: this unconstitutional receivership should end immediately.

As before, pursuant to Rules 208(b)(6) and 240, SCACR, the Altrad Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated parties. Finally, by submitting this reply, the Altrad Defendants do not waive, but continue to specifically preserve their objection to personal jurisdiction.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll  
S.C. Bar No. 74000  
todd.carroll@wbd-us.com  
Kevin A. Hall  
S.C. Bar No. 15063  
kevin.hall@wbd-us.com  
M. Elizabeth O'Neill  
S.C. Bar No. 104013  
elizabeth.oneill@wbd-us.com  
1221 Main Street, Suite 1600  
Columbia, SC 29201  
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and Altrad  
Investment Authority SAS*

January 27, 2025