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May 19 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2024-000916 (Rule 205 Injunction), 2024-001499 (Appointment of Receiver and Personal Jurisdiction), 2024-002114 (Mode of Trial), 2024-002116 (Contempt), & 2025-000052 (Second Mode of Trial)

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.

ALTRAD DEFENDANTS' RESPONSE TO THE SUPREME COURT'S MAY 8, 2025 CORRESPONDENCE

The Altrad Defendants have five pending petitions for a writ of certiorari arising out of the so-called "Cape" receivership and the *Tibbs* case. As discussed below, at least two of those appeals, as well as all trial-level activities, are directly impacted by the stay imposed by ACL's bankruptcy proceedings: Appellate Case No. 2024-002114 (Mode of Trial), and Appellate Case No. 2025-000052 (Second Mode of Trial).

However, notwithstanding the ACL stay, other key, dispositive issues in the Altrad Defendants' appeals remain ripe for urgent resolution to put an end to this unconstitutional, unlawful receivership scheme and its related abuses. Resolution of these dispositive issues in Appellate Case No. 2024-001499 would not only efficiently terminate the purported "Cape" receivership, but it would also create clear guardrails for what a South Carolina receiver can and cannot do in asbestos litigation, consistent with the limits of state-court receivers under South Carolina law, the United States Constitution, respect for the internal affairs of solvent business, principles of comity, and principles against extraterritorial assertions of power by state court receivers.

BACKGROUND OF ACL'S BANKRUPTCY PROCEEDINGS

Chapter 15 of Title 11 of the United States Code—the Bankruptcy Code—was enacted in 2005 to adopt with certain modifications the UNCITRAL Model Law on Cross Border Insolvency (the "Model Law").[1] Both Chapter 15 and the Model Law are premised upon the principle of

[1] The Model Law has been enacted by more than 50 countries. The last two digits of the cited U.S. Bankruptcy Code sections correspond to the similarly numbered Articles of the Model Law.

international comity.[2] Chapter 15's purposes include promoting cooperation between U.S. and foreign courts and the fair and efficient administration of cross-border cases to protect the interests of all stakeholders.[3] In applying Chapter 15, U.S. courts are directed to "consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions."[4]

A Chapter 15 case is commenced by the filing of a petition for recognition of a foreign bankruptcy case.[5] Upon recognition of the foreign bankruptcy case as a foreign main proceeding, the automatic stay under Bankruptcy Code Section 362(a) applies to protect "the debtor and the property of the debtor that is within the territorial jurisdiction of the United States."[6] From the time of filing the Chapter 15 petition for recognition and granting such recognition, a bankruptcy court may, in its discretion, grant provisional injunctive relief that is coextensive with the automatic stay under Bankruptcy Code Section 362(a).[7]

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[2] The U.S. Supreme Court has described international comity as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).

[3] 11 U.S.C. § 1501(a) (The purpose of Chapter 15 is to "incorporate the [Model Law] so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of," among other things, cooperation between U.S. and foreign courts, greater legal certainty for trade and investment, fair and efficient administration of cross-border cases to protect the interests of all stakeholders, protection and maximization of the value of a debtor's assets, and the rehabilitation of financially troubled businesses").

[4] *Id.* § 1508.

[5] *Id.* § 1504.

[6] *Id.* § 1520(a)(1). In addition, upon recognition of a foreign nonmain proceeding, a bankruptcy court may in its discretion apply the automatic stay under Bankruptcy Code Section 362(a) to protect the debtor and its property within the territorial jurisdiction of the United States. *Id.* § 1521(a).

[7] *See id.* § 1519(a).

Asbestos Corporation Limited ("ACL") commenced a Chapter 15 case in the United States Bankruptcy Court for the Southern District of New York for recognition of a proceeding under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA Proceeding") currently pending before the Québec Superior Court of Justice (Commercial List).[8] The U.S. Bankruptcy Court has scheduled a hearing on recognition of the CCAA Proceeding, which has been rescheduled for June 30, 2025 (the "Recognition Hearing").[9] Further, ACL has requested provisional relief to impose the automatic stay pending the Recognition Hearing.[10] Despite being given a chance to oppose this request, the Receiver told the U.S. Bankruptcy Court that he "takes no position" regarding ACL's requested relief.[11] A hearing on this request for provisional relief is scheduled for May 19, 2025 (the "Provisional Relief Hearing").

Pending the Provisional Relief Hearing, the U.S. Bankruptcy Court has entered a Temporary Restraining Order—already provided to this Court—applying Bankruptcy Code Section 362 "to stay and restrain all persons and entities" from, among other things, "commencing or continuing any suit, action, or proceeding against" ACL.[12] The TRO was effective immediately

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[8] Dkt. Nos. 1, 4 in *In re: Asbestos Corp. Ltd.*, Case No. 1:25-bk-10934-mg (Bankr. S.D.N.Y.) ("U.S. Bankruptcy Proceedings").

[9] Dkt. No. 32, at 4 in U.S. Bankruptcy Proceedings.

[10] Dkt. No. 5 in U.S. Bankruptcy Proceedings.

[11] Dkt. No. 23, at 36 in U.S. Bankruptcy Proceedings.

[12] Dkt. No. 8 in U.S. Bankruptcy Proceedings, TRO, ¶ 1. The provisional relief granted by the TRO is essentially coextensive with the traditional automatic stay under Bankruptcy Code Section 362 and, in addition to ACL, applies to protect certain "Stay Parties," which include ACL's officers and directors, CLMI, and a third-party claims administrator and to protect ACL's "U.S. Interests," which include its (i) property and the proceeds thereof, if any, located within the territorial jurisdiction of the United States, as further defined in 11 U.S.C. § 1502(8); and (ii) rights, obligations and responsibilities in the United States. *Id.*; *see also id.* ¶ 4.

and enforceable upon its entry on May 6, 2025.[13] By its terms, the TRO remains in effect and continues "for so long as the stay imposed in the CCA Proceeding remains in effect" unless cause is shown to the contrary at the Provisional Relief Hearing,[14] written consent is provided by ACL, or leave is granted by the U.S. Bankruptcy Court.[15]

By its plain language, the U.S. Bankruptcy Court's TRO applies to the automatic stay to protect ACL from the commencement or continuation of proceedings against it. The *Tibbs* case and appeals from it are proceedings "against" ACL because ACL is a defendant in the underlying *Tibbs* case and has opposed the Receiver's overreach. Accordingly, the South Carolina proceeding is stayed, just as ACL recently explained in its own response to the Court's May 8, 2025 correspondence.[16] This stay applies to ACL and all litigation involving it, including the underlying *Tibbs* case.[17] It will remain in effect unless and until the U.S. Bankruptcy Court either declines to convert the TRO into an order of provisional relief at the Provisional Relief Hearing or grant recognition at the Recognition Hearing or grants leave from its protections.

Accordingly, the scope of the stay of proceedings involving ACL may be altered following the June 30th hearing. Respectfully, it is important for the Court to be aware of that possibility as it considers the applicability of the current TRO.

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[13] TRO, ¶ 8.

[14] TRO, ¶ 9.

[15] TRO, ¶ 4

[16] *See* TRO, ¶¶ 1(i) and 4. For avoidance of doubt, this stay is subject to certain exceptions that are not relevant here. *See id.* ¶ 4(i)-(iii).

[17] *See* TRO, ¶ 1 (the stay applies to "all persons and entities").

ALTRAD DEFENDANTS' PENDING APPEALS

The Altrad Defendants presently have five petitions pending before this Court that all derive from a single source: The purported Receiver for "Cape" (like ACL, a first-party defendant in *Tibbs*) wrongly believes he has the power to reach beyond South Carolina's borders to divest the boards of foreign corporations of their power to govern, but the United States Constitution and South Carolina law specifically forbid what is happening below.[18]

This issue isn't limited to the Altrad Defendants' case, either, as the Receiver has attempted to interfere with businesses in ***at least*** New Jersey (Whittaker Clark & Daniels), Texas (Payne & Keller), Canada (ACL and Atlas Turner, as this Court is aware), England (Cape Intermediate Holdings Limited), and the Bailiwick of Jersey (Cape PLC), among numerous others. And the Receiver not only tries to interfere with the businesses themselves, he also sues their lawyers when those companies take steps to protect themselves from his overreach.[19] The independent court-appointed Monitor for ACL even highlighted this practice of the Receiver in submissions to both the Canadian and American bankruptcy courts:

> Moreover, the South Carolina Receiver has repeatedly taken legal action against counsel in cases involving other asbestos defendants for which he has been appointed receiver, seeking sanctions, damages, and other legal relief against counsel personally.

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[18] *See generally Pollock v. Carolina Interstate B&L Ass'n*, 48 S.C. 65, 25 S.E. 977, 980 (1896) ("The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.")

[19] Examples of cases in which the Receiver has sued or threatened to sue lawyers and law firms include: 2017-CP-42-04429 (Gallivan, White & Boyd); 2019-CP-40-02285 (Wall, Templeton & Haldrup); 2023-CP-40-02034 (Fox Rothschild, McGivney Luger Clark & Intoccia, Lathrop, and several individual lawyers); 2023-CP-40-05203 (Baker & Patterson and individual lawyer); 2021-CP-40-02727 (Troutman Pepper Locke); 2023-CP-40-03540 (Goldfein & Joseph); and 2024-CP-40-05397 (Winston & Strawn and several individual lawyers). The Court should rebuke such attacks on the Rule of Law and misuses of the Judiciary to coerce companies to yield to the Receiver's wishes.

> Specifically, the South Carolina Receiver has retaliated against opposing counsel and law firms for (i) claims of alleged legal malpractice, (ii) declarations that the Receiver is entitled to counsel's and client files, (iii) claims of alleged spoliation of evidence with respect to representations of clients dating back decades, (iv) declarations that counsel and law firms must "account" for all fees received from clients, and (v) sanctions.[20]

The Receiver's behavior is a far cry from the far more modest and circumscribed position his counsel took at oral argument before this Court in the ACL appeal, where he represented to the Court that the Receiver's authority was limited only to trying to seize a foreign company's insurance policies (even though as a matter of South Carolina law, insurance policies issued by and to out-of-state entities are not considered property that can be seized in this state). While that was the Receiver's position at oral argument to this Court in ACL, his behavior in other cases demonstrates that he has a far more ambitious view of his powers and their ability to extend nationwide and even internationally.

This overreach by the Receiver beyond any semblance of the limits of state-court receivers under the U.S. Constitution and South Carolina law has now been rebuked by several courts outside of South Carolina—first by federal courts in New Jersey (WCD);[21] then by international

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[20] First Report by Raymond Chabot Inc. in its Capacity as Monitor ¶¶ 2.26–2.27 (Dkt. No. 32-3 in U.S. Bankruptcy Proceedings).

[21] *Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *16–17 (D.N.J. May 31, 2024) ("The enacting statute in question limits the power of a receiver over a foreign corporation to 'the property within this state.' S.C. Code Ann. § 15-65-10(4). This is intuitive—traditionally, a state court's power is limited to its territorial boundaries."), *further appeal pending at* Case No. 24-2210 (3d Cir.).

courts in England and Wales and France (CIHL and, derivatively, Cape PLC);[22] and now by a federal court in New York (ACL).[23]

Respectfully, the Court should not let this untenable, unlawful situation fester any longer. The Altrad Defendants' Appellate Case Nos. 2024-002114 (Mode of Trial) and 2025-000052 (Second Mode of Trial) are both directly implicated by the TRO, as they involve the right to jury trials before the circuit court in proceedings also involving ACL. As the Court is aware, the Receiver's "claims" against the Altrad Defendants are supposedly derivative claims, as he pled them via a third-party complaint, and Rule 14 only permits third-party practice for derivative claims. But without direct liability first attaching to Cape PLC from the *Tibbs* case, there can be no "derivative" third-party claim. There can be no such first-party liability, though, without a jury trial that involves both Cape PLC (over which the circuit court has no jurisdiction) and ACL (against which litigation is now suspended due to the TRO).

This procedural requirement—that ACL, Cape PLC, and all other first-party defendants must be included at trial—is a function of the South Carolina Contribution Among Tortfeasors Act. As a matter of South Carolina law, when tort claims are asserted against multiple defendants, a jury (when, as here, one is demanded) must apportion fault among the litigants, or it can assign the entirety of liability to a third party. S.C. Code Ann. §§ 15-38-15(C), (D). If a defendant's fault

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[22] *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (Supp. App. 1); Ex. A, *Cape PLC v. Protopapas*, Case DBYB-W-B7J-PM3N, at 7 (Montpellier Court of Appeal Apr. 8, 2025) ("Pronounces the exequatur and declares enforceable in France the order of the High Court of Justice of England and Wales dated November 22, 2024 against Mr. Peter Protopapas" after independently affirming that the High Court had jurisdiction to render its decision, that the High Court's decision does not violate international public policy, and that there was no fraud involved in the proceedings before the High Court) (English translation).

[23] Because the ACL proceedings arose under Chapter 15, entry of the stay was discretionary with the U.S. Bankruptcy Court; after being informed through a petition for the TRO about the Receiver's conduct, the U.S. Bankruptcy Court entered the TRO.

is determined to be less than 50%, then it is liable only for that percentage of damages. *Id.* § 15-38-15(A).

In other words, when multiple defendants are alleged to have contributed to a plaintiff's injury, as is the case in *Tibbs*, each defendant is entitled to have all other defendants at trial; otherwise, the jury cannot apportion fault as required by law. Because the TRO stays litigation against ACL, it necessarily stays any trial in the *Tibbs* case—which is the core issue in two of the Altrad Defendants' appeals before this Court. Those appeals should be stayed accordingly, along with all other proceedings below, because there's no possible way to have any "derivative" liability through third-party claims when the first-party case cannot lawfully proceed due to the ACL stay.[24]

However, there are other dispositive issues at stake in the Altrad Defendants' appeals that are independent of ACL's TRO and that the Court can, and should, properly address without delay.

In Appellate Case No. 2024-001499, the Altrad Defendants challenge the roots of the problem: the circuit court's unlawful appointment of a Receiver, and the circuit court's unlawful attempt to exercise personal jurisdiction over the Altrad Defendants. The Court has already recognized this as the nub of the dispute. "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 [in the ACL appeal]." Order (Jan. 16, 2025) (emphasis added).

[24] Similarly, all proceedings in the "third-party" case should have been enjoined over a year ago due to the circuit court's lack of jurisdiction to proceed with anything while appeals involving the impropriety of the Receiver's appointment are pending. Rule 205, SCACR. The absence of jurisdiction is an independent reason why the proceedings below should not proceed, and it is the focus of Appellate Case No. 2024-000916. Moreover, that the circuit court held the Altrad Defendants in contempt and struck a portion of their pleadings without any jurisdiction to do so is the focus of Appellate Case No. 2024-002116, and it goes hand-in-glove with the Altrad Defendants' Rule 205 Injunction appeal.

Although the resolution of that issue is now stayed as it relates to ACL, the Court continues to have the ability to review and vacate the circuit court's order finding that the "Cape" receivership was properly created, modified, and continued.[25] Simply put, the circuit court never had personal jurisdiction over Cape PLC (in Jersey), or over CIHL (in England), or over Altrad UK (in England), or over Mr. Altrad or Altrad Investment Authority (in France). And without jurisdiction over any of them, it certainly could not appoint a receiver over Cape PLC or CIHL, nor could it authorize a South Carolina lawyer to try and seize the foreign (non-insurance) assets or property of either of these foreign companies; it could not authorize a South Carolina lawyer to bring claims in the name of either of these foreign companies; it could not authorize a South Carolina lawyer to claim to accept service for either of these foreign companies; it could not authorize a South Carolina lawyer to try and issue subpoenas in the names of either of these foreign companies; it could not authorize a South Carolina lawyer to seek to de-privilege Cape PLC or CIHL's records; and it could not authorize a South Carolina lawyer to appear as counsel for either of these foreign companies.

But the circuit court has allowed the Receiver to do (or at least try to do) all of these things. That is unquestionably unconstitutional. For one, the Commerce Clause, among others, prohibits one state from trying to reach beyond its own borders to impact commerce happening in another state or nation. Likewise, the Due Process Clause forbids a court from exercising jurisdiction over

[25] In his filing before the U.S. Bankruptcy Court, the Receiver has given himself the title "The Court-Appointed Receiver for the Insurance Assets of Asbestos Corporation." (Dkt. No. 23 in U.S. Bankruptcy Proceedings.) And he conceded before this Court in response to questioning from Justice Few that the outer boundary of the receivership could only possibly reach ACL's insurance policies. (Dkt. No. 23-43 in U.S. Bankruptcy Proceedings, at Oral Argument Tr. 90:5–91:9.) This is wrong as a matter of long-settled law, as such policies are not "property" within South Carolina. *Howard v. Allen*, 254 S.C. 455, 460–61, 176 S.E.2d 127, 129 (1970). But, critically, the appointment orders here in no way contain such an "insurance only" limitation, heightening the urgency of this Court's dissolution of the Cape PLC and CIHL receiverships.

an entity that has done nothing to purposefully avail itself of that forum—and nothing in the record or reality suggests the Altrad Defendants (or Cape PLC, or CIHL) have ever done anything at all to engage with South Carolina.

These "receiverships" are also contrary to South Carolina law. South Carolina Code § 15-65-10(4) only allows a receivership to involve a foreign company when that foreign company is a judgment debtor, and a receivership can only attach to a foreign company's assets that are located within South Carolina. Here, there are no such debts, and there are no such assets.[26]

The absence of any in-state connection is true even on the Receiver's previously-rejected theory that insurance policies covering in-state obligations are in-state assets, as the "Cape" receivership has nothing to do with insurance and is instead an attempt by the Receiver to ***create*** liabilities for "Cape" by contending that "Cape" was in a fraudulent liability-avoidance scheme with its alleged alter egos, including the Altrad Defendants and numerous others.[27] This litigation,

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[26] Realizing this is the case, the circuit court abandoned this basis for appointing the Receiver over Cape PLC when it entered ***in Tibbs*** its *nunc pro tunc* modification of the receivership ***in Park*** to now be over CIHL—an unlawful modification that is squarely before the Court in Appellate Case No. 2024-001499.

What's more, when Cape PLC and CIHL brought this situation to the attention of the English court, the circuit court entered yet another order ***in Park*** that purports to approve of the Receiver's misconduct ***in Tibbs***. Stunningly, the Receiver notified the U.S. Bankruptcy Court of this latter order, but he stated to the U.S. Bankruptcy Court that it was entered ***in Tibbs***, which is not true (because, if it had been entered in *Tibbs*, the Receiver knows that it would have been immediately appealable as a matter of right by the Altrad Defendants and others). (Dkt. No. 23, at 35 n.122 in U.S. Bankruptcy Proceedings.) Worse yet, despite trumpeting that order's content, the Receiver failed to notify the U.S. Bankruptcy Court that the Locke Lord law firm timely filed a Rule 59 motion that challenged the lawfulness of that "clarification" order and exposed the procedural irregularities underlying it—a motion that has been unopposed, yet unruled upon, for over six months and counting. (Locke Lord's Rule 59 Motion (Nov. 15, 2024), in *Park v. Armstrong Int'l*, Case No. 2021-CP-40-02727.)

[27] As this Court is aware, the Receiver's exact narrative was fully considered and rejected after a 34-day long trial and 17-day long appellate process in 1990. *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA). (Supp. App. 104–483.)

in other words, has nothing to do with a state-court receiver seeking to marshal and collect in-state assets or insurance policies the Receiver contends cover in-state obligations.

Courts elsewhere recognize the impropriety of the Receiver's attempts to reach across borders and have rejected those attempts. Consider the Chapter 11 bankruptcy filed by WCD in New Jersey, where it is located. Following a verdict in the Asbestos Docket against WCD, Judge Toal appointed the Receiver under Section 15-65-10(4) "pursuant to the South Carolina Law" and conferred the "power and authority [to] fully administer all assets of WCD, accept service on behalf of WCD, engage counsel on behalf of WCD and take any and all steps necessary to protect the interests of WCD whatever they may be." The Receiver interpreted that appointment to mean he controlled the interests of WCD no matter the issue or the venue and that, as the Receiver, he had sole authority to put the corporation into bankruptcy if he, and he alone, wanted to. The Receiver also argued that the appointment order divested the WCD Board of Directors of its power.

Claiming that he alone controlled WCD, the Receiver moved for the Bankruptcy Court to dismiss the WCD bankruptcy. The Bankruptcy Court in New Jersey disagreed and denied a motion to dismiss filed by the Receiver. The District Court affirmed that dismissal.[28]

The District Court's opinion surveyed South Carolina law and confirmed the basic point that a receiver can have no extraterritorial reach, stating: "The enacting statute in question limits the power of a receiver over a foreign corporation to 'the property within this state.'" (citing S.C.

[28] *See In re Whittaker, Clark & Daniels, Inc.*, Case No. 23-13575 (MBK), 2023 Bankr. LEXIS 1600, at *14–25 (Bankr. D.N.J. June 20, 2023) (rejecting the receiver's arguments that the South Carolina circuit court authorized him to block a New Jersey company's board of directors from making a bankruptcy filing), *ruling affirmed and Receiver's appeal dismissed by Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270 (D.N.J. May 31, 2024), *further appeal pending at* Case No. 24-2210 (3d Cir.).

Code Ann. §15-65-10(4)).[29] It also commented on the limitations of the Receiver in an extensive footnote, explaining in part:

> South Carolina precedent more broadly also pulls against [the Receiver's] contention that the Receivership Order would automatically reach beyond its borders and into the governance of a foreign corporation without any specific language indicating as much. In *Clark v. Preferred Accident Insurance Company of New York*, the South Carolina Supreme Court wrote that "[e]very State has jurisdiction to determine for itself the liability of property within its territorial limits, to seize and sell such under the process of its Courts." 231 S.C. 167, 175 (1957).[30]

The courts in New Jersey are not alone in their rebuke of the Receiver's overreach. As this Court is aware, Justice Mann of the High Court of Justice, Business and Property Courts of England and Wales ordered on November 22, 2024, that the Receivership Order appointing Protopapas as a receiver over a UK entity is not recognized and has no legal effect in England and Wales and worldwide. The Order further held that the Receiver has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and that the rights and duties of CIHL remain unaffected by the appointment of Protopapas as receiver in South Carolina. Such was the High Court's astonishment at the receivership and his unlawful actions that it took the extraordinary step of enjoining him purporting to act on behalf of CIHL worldwide.[31]

More recently, on April 8, 2025, a French court affirmed the High Court's Judgment and held that the Receiver had no power authority to act for Cape, the U.K. entity, recognizing that his purported appointment was invalid under French law, too.[32]

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[29] 2024 U.S. Dist. LEXIS 97270, at *16.

[30] *Id.* at *18 n.8.

[31] (Supp. App. 1–85.)

[32] French and English translations are attached at Exhibit A. Additional international scrutiny over the Receiver's misconduct further underscores that there are "special and important reasons" for the Court to grant the Altrad Defendants' certiorari petitions. Rule 242(b), SCACR.

ACL's recent bankruptcy filing in Canada, and the related Chapter 15 action in New York, make the same argument—that the Receiver has over-extended the boundaries of his putative authority and is attempting to operate outside the bounds of the South Carolina receivership statute. The consequences of the Receiver acting outside the bounds of his authority are captured by ACL's Initial Application. The Application rightly observed in paragraph 76: "It is highly worrisome and problematic that the South Carolina Receiver was appointed in respect of a Quebec-based company, with no activities or operations in the United States, let alone in South Carolina."

The upshot of this discussion is obvious: while the ACL TRO necessarily stays all trial-level proceedings in *Tibbs* and the Altrad Defendants' appeals before this Court that relate to trial-level procedural issues, the Court can and should vacate this unlawful receivership and put an end to this litigation by accepting certiorari review of issues that do not relate to trial procedures but that are dispositive of this whole situation through Appellate Case No. 2024-001499. The Receiver has never, not once, even attempted to argue that his appointment as a receiver for Cape PLC or CIHL is legitimate, or that his extraterritorial conduct is consistent with U.S. Constitutional, South Carolina, or international law. Indeed, it is not.

Accordingly, the Altrad Defendants respectfully urge the Court to confirm as much so that this matter can conclude and to give guidance on the appropriate reach and scope of receiver appointments in South Carolina asbestos litigation so that these appointments can be made consistent with the U.S. Constitution and South Carolina law.

Signature Page Attached

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

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