

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2024-000916 (Rule 205 Injunction), 2024-001423 (Appointment of Receiver and Personal Jurisdiction), 2024-002114 (Mode of Trial), 2024-002117 (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; 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, Inc.; 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

Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Appellants.

RESPONSE TO THE SUPREME COURT’S MAY 8, 2025 CORRESPONDENCE

Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (collectively, “Charter Defendants”),¹ by and through undersigned counsel, respectfully submit this response to the Court’s May 8, 2025 letter instructing the Charter Defendants and others to advise whether the Charter Appeals are stayed in light of the May 6, 2025 Order Granting Provisional Relief (“Bankruptcy Order”) issued by the United States Bankruptcy Court of the Southern District of New York in *In re: Asbestos Corporation Limited*, Case No. 25-10934 (mg) (“ACL U.S. Proceeding”).² The bankruptcy court has set a June 2, 2025 hearing in the ACL U.S. Proceeding, the outcome of which will provide further guidance on how to proceed here. The Bankruptcy Order simply imposes a temporary stay as to ACL in the interim.

As background, the Bankruptcy Order was issued in a Chapter 15 action commenced on behalf of Asbestos Corporation Limited (“ACL”), a Canadian corporation currently undergoing insolvency proceedings before the Superior Court of Québec pursuant to Canada’s Companies’ Creditors Arrangement Act (“ACL Canadian Proceeding”). A declaration submitted by ACL’s court-appointed monitor in the ACL U.S. Proceeding indicates that ACL’s insolvency was driven in part by the actions of Peter D. Protopapas (“Mr. Protopapas”) as ACL’s purported receiver,

¹ By continuing to prosecute the Charter Appeals, the Charter Defendants do not waive, and expressly preserve, all defenses to the underlying action, including the defense of lack of personal jurisdiction.

² Pursuant to Rule 208(b)(6), SCACR, the Charter Defendants adopt by reference the arguments filed by Petitioners Mohed Altrad and Altrad Investment Authority SAS in response to the Court’s May 8, 2025 correspondence, to the extent not inconsistent with arguments asserted herein.

including but not limited to settling claims for excessive amounts that ACL did not consent to, making statements in direct contravention of ACL's interests, and exposing ACL to sanctions and defaults in legal proceedings across the United States. *See* Declaration of Ayman Chaaban Pursuant to 28 U.S.C. § 1786, ECF No. 2 in the ACL U.S. Proceeding. Mr. Protopapas is also the purported receiver ("Receiver") for Cape plc ("Cape"), another first party defendant in *Tibbs* alongside ACL. He has brought third-party claims in the name of Cape against the Charter Defendants and others in the *Tibbs* action, and his appointment is a central issue in the Charter Appeals.

Prior to initiating the ACL Canadian Proceeding, ACL commenced an appeal ("ACL Appeal") in the *Tibbs* case challenging the trial court's appointment of Mr. Protopapas as its receiver. A core issue in the ACL Appeal is the validity of the appointment of a receiver over a foreign active corporation with no assets located in South Carolina under S.C. Code § 15-65-10(4). The Court granted certiorari, and the ACL Appeal was argued before the Court on February 11, 2025. The ACL Appeal has now been stayed as to ACL by the Bankruptcy Order, which (among other things) prohibits continuing any suit, action, or proceeding against ACL pursuant to Section 362 of title 11 of the United States Code.

The Charter Appeals have asked the Court to grant certiorari on a shared issue that was argued before the Court in the ACL Appeal: the validity of the appointment of a receiver over a foreign active corporation with no assets located in South Carolina under S.C. Code § 15-65-10(4). However, the Charter Appeals also raise numerous additional issues relating to the validity of the appointment of the Receiver and Receiver's authority that are not part of the ACL Appeal – such as whether the criteria to place Cape into receivership were met, whether the "Cape plc" receivership extends to a separate active foreign corporation that was not identified in the receivership order, and if the Receiver may bring veil piercing and alter ego claims against the

Charter Defendants and other third-party defendants based on the Receiver's own allegations of Cape's wrongdoing.

The Court's January 16, 2025 Order ("January 2025 Order") acknowledged the overlap between the ACL Appeal and the Charter Appeals by linking them as to this discrete shared issue. More specifically, in response to the Receiver's motion for a writ of supersedeas seeking to override an English court's order in Cape's favor that deemed the Receiver's appointment invalid and permanently enjoined him from acting for Cape anywhere in the world, the January 2025 Order indicated that "the appropriate reach of the Receiver" would be heard and resolved as to the Charter Defendants and others after the February 11, 2025 oral argument in the ACL Appeal. Now that the ACL Appeal is temporarily stayed pending the June 2, 2025 hearing in the ACL U.S. Proceeding, thereby pausing the Court's decision on the scope and boundaries of receiverships, the Charter Appeals, to the extent they remain linked to the ACL Appeal by the Court, are also temporarily stayed.

Notwithstanding the foregoing, if the Court decides the Charter Appeals need not remain tied to the ACL Appeal by this single overlapping issue, the Charter Defendants respectfully submit that the other multiple urgent and critical questions posed by the Charter Appeals as to Rule 205 Injunction (2024-000916), Appointment of Receiver and Personal Jurisdiction (2024-001423), and Contempt (2024-002117) warrant the Court's swift attention.³ Those questions include:

1. May a pre-judgment receiver appointed over a foreign corporation in one case pursuant to S.C. Code Ann. § 15-65-10, *et seq.*, act in and assert causes of action in another case in which he was not appointed?
2. May a pre-judgment receiver appointed over a foreign corporation pursuant to S.C. Code Ann. § 15-65-10, *et seq.*, also act as receiver for another (different) foreign company for which there is no appointment motion or order?

³The Charter Appeals as to Mode of Trial (2024-002114) and Second Mode of Trial (2025-000052) are directly impacted by the stay imposed by ACL's bankruptcy proceedings.

3. May a pre-judgment receiver appointed over a foreign corporation in one case pursuant to S.C. Code Ann. § 15-65-10 act as a receiver over that foreign corporation in another case in which the foreign corporation was not properly served with process and therefore cannot be deemed to be in default?
4. To act as a pre-judgment receiver over a foreign corporation in a case, must some party in the case first make a motion to appoint a receiver in that case and/or must the trial court first issue an order appointing a pre-judgment receiver in that case?
5. May a pre-judgment receiver be appointed over a foreign company that is not a party to the case?
6. May a pre-judgment receiver pursue alter ego claims against a third-party defendant in a South Carolina action when multiple courts across the United States have found that no such alter ego claims exist?
7. May a receiver appointed over a foreign corporation pursuant to S.C. Code Ann. § 15-65-10 seize any assets and property of the foreign corporation located outside South Carolina?
8. Must a court first have personal jurisdiction over a foreign corporation in order to appoint a receiver?
9. May a pre-judgment receiver be appointed over a foreign company that has never been served with a motion to appoint a receiver?
10. Must the pre-judgment receiver appointment order over a foreign corporation be dissolved after the party moving to appoint the receiver has resolved his case?
11. Is a pre-judgment receiver appointment order void *ab initio* pursuant to S.C. Code Ann. § 15-65-60 when the appointment order does not contain the mandatory clause “fixing the value of the property for which the bond may be given”?
12. May the Circuit Court ignore the pre-judgment right to tender a bond to dissolve a receivership pursuant to S.C. Code Ann. § 15-65-60?
13. May a pre-judgment receiver appointed over an active foreign corporation file a new action alleging massive wrongdoing and/or admit liability?
14. Do the receiver appointment orders and actions of the receiver in this case violate the Commerce Clause, the Due Process Clause, the Equal Protection Clause, the Takings Clause, and the Excessive Fines Clause?

Although the ACL Appeal and the trial-level proceedings in the underlying *Tibbs* action are currently stayed by the Bankruptcy Order, these wide-reaching issues – which have an impact far beyond the Cape receiver litigation, and indeed, the *Tibbs* case and various receiver litigation that has sprouted from it (e.g., the ACL and Atlas Turner third-party receiver actions – are appropriate for the Court’s consideration. This is especially true as the Receiver continues to purport to act for Cape in *Tibbs* and elsewhere, which directly contravenes the order from the High Court of Justice, Business and Property Courts of England and Wales permanently enjoining the Receiver from doing so worldwide.

Indeed, the English court proceedings illustrate the potential global implications and conflict relating to the Receiver’s continued activities on behalf of Cape despite the defects enumerated above. As the Charter Defendants previously advised the Court in their November 27, 2024 Supplement to the Petitions for a Writ of Certiorari in Case Nos. 2024-000916 and 2024-001423, Cape filed an action in the High Court of Justice, Business and Property Courts of England and Wales challenging the Receiver’s ability to act on its behalf and seeking protection from his unauthorized actions, including “admitting” without Cape’s consent to decades of alleged wrongdoing and billions of dollars of alleged liabilities in the United States without mounting a single defense to such claims – even though the courts already previously determined that Cape has no such U.S.-based liabilities.

After a full trial, the English court issued a decision on November 22, 2024 finding that the Receiver has no power or authority to act on behalf of Cape anywhere in the world, awarding sanctions in Cape’s favor, and threatening further sanctions should the Receiver violate the English court order. This decision has been recognized by other jurisdictions, including a French court which affirmed that the Receiver has no power to act for Cape. Rather than abide by the English

court's decree, however, the Receiver has continued to forge ahead by "admitting" liability and litigating in Cape's name in multiple South Carolina cases, seemingly uninhibited by the directives of a court outside of this state. While principles of international comity require application of the English court's order to the Receiver regardless of whether a South Carolina court issues a comparable order, it appears the Receiver will not stop his unauthorized activities unless and until this Court tells him he must.

In conclusion, the Charter Defendants respectfully submit that to the extent the Court continues to deem the Charter Appeals linked to the ACL Appeal by their shared issue, a stay of the Charter Appeals is appropriate until the bankruptcy court issues further guidance after the June 2, 2025 hearing. That said, multiple compelling factors relating to international comity, violation of the US Constitution, including the Commerce Clause and due process considerations, South Carolina's own longstanding receivership law, and public policy considerations, including respect for the sovereign integrity of other U.S. states and other nations' courts and of the rights of solvent companies through their own boards to chart their litigation strategy, warrant promptly addressing the Charter Appeals, regardless of the status of the ACL Appeal, should the Court be inclined to do so.

Respectfully submitted,

Dated: May 19, 2025

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