

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jean H. Toal  
Acting Circuit Court Judge

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.

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NOTICE OF SUPPLEMENTAL AUTHORITY

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As the Court is aware, the Altrad Defendants have five pending certiorari petitions that arise out of the *Tibbs* case and involve the “Cape” receivership. The Court’s recent decision in *Welch v. Advance Auto Parts, Inc.*, Op. No. 28284 (S.C. May 21, 2025), makes reference to that receivership but, most respectfully, discusses it in a way that suggests that the Court has misunderstood the circumstances underlying the “Cape” receivership. The Altrad Defendants file this Notice of Supplemental Authority to ensure that the Court considers the gravity of their pending certiorari petitions against the correct procedural backdrop.

*Welch* references the “Cape” receivership in this case on Pages 16 and 17 of its decision. There, *Welch* states that “an English company”—presumably, this is in reference to Cape Intermediate Holdings Limited (CIHL)—has “shun[ned] the civil process of South Carolina’s courts to the point of being declared in default and then fight the enforceability of the default judgment on what it perceives to be friendlier soil.” And *Welch* describes the litigation conduct of the “English company” as being exactly the same as that of Atlas Turner, the subject of *Welch*.<sup>1</sup>

Respectfully, these statements are incorrect. In fact, there is not a single commonality between Cape PLC (Jersey) or CIHL (England) in this case and Atlas Turner (Canada) in *Welch*. The fact that the Court appears to misunderstand the fundamental elements of this case without briefing and without an appellate record only heightens the need for proper certiorari review.

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<sup>1</sup> *Welch* described Atlas Turner’s conduct as being an “outspoken refusal to comply with the trial court’s orders,” “contemptuous disregard” of the circuit court, and as a “moral fraud against the trial court, the state of South Carolina, and [that plaintiff].” (Op. at 13–14.) And it noted that “Atlas Turner is in default” (*id.* at 17), though *Welch* warned that the Asbestos Docket’s current conception of a “receivership” “is not to be used in the typical default case” (*id.* at 19).

### **Park Proceedings**

The receivership at issue in this case began in a completely different case: *Park v. Armstrong International Inc.*, Case No. 2021-CP-40-02727. Nothing in the Public Index indicates that Ms. Park ever served either Cape PLC or CIHL with process according to governing international conventions, as required by Rules 4(g) and 4.1(c), SCRCF. (App. 249–77 in Appellate Case No. 2024-001499.)<sup>2</sup> Without proper service, there can be no personal jurisdiction.

Ms. Park’s case was set for trial on June 20, 2022. (App. 426.) On June 3, 2022, Ms. Park’s counsel notified the circuit court that the case was “fully resolved,” mooted the trial setting. (App. 432.) No default was ever entered against either Cape PLC or CIHL, as provided by Rule 55(a), SCRCF. Nor was a default judgment ever entered against either Cape PLC or CIHL, as provided by Rule 55(b), SCRCF. And, of course, no such judgment could have been entered without first having a jury trial on damages, as required by Rule 55(b)(2), but such a trial will never happen because—as Ms. Park’s counsel represented to the circuit court exactly three years and one day ago—her claims are all “fully resolved.” (App. 432.)

Nine months after Ms. Park’s case resolved, her attorneys moved to have the circuit court appoint a receiver only over Cape PLC, but not CIHL (App. 119–26.) The theory of the appointment request was that Cape PLC had dissolved (which is false) and that Cape PLC “establishes American presence and operations through NAAC” and then “accepts default judgments and liquidates NAAC to evade claimants” (which is also false). (App. 120–23.)<sup>3</sup>

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<sup>2</sup> Even a post-receivership-appointment filing failed to provide any proof that either Cape PLC or CIHL was served with any of the three versions of Ms. Park’s complaint that would inform them of her claims. (App. 104–05.)

<sup>3</sup> The complete falsity of this latter theory was confirmed at a trial and on appeal 35 years ago in *Adams v. Cape Industries plc* (1990) 1 Ch. 433 (CA). A copy of the trial court’s order and the appellate court’s order in *Adams* are attached at Supplemental Appendix Pages 104 through 483 in Appellate Case No. 2024-001499. It appears that this entire litigation is a coordinated attempt

The circuit court granted the motion and appointed the Receiver over Cape PLC only, but it did not limit the scope of the appointment to only “Insurance Assets,” as it did in the Atlas Turner matter. The appointment order is attached to this Notice so that the Court can see for itself how the circuit court purported to give the Receiver unbridled authority over “all assets of Cape”—all without any proof of service of process, without personal jurisdiction, without a default, without a default judgment, and nine months after the underlying *Park* case was “fully resolved.”

### **Tibbs Proceedings**

The Receiver marshaled no assets to satisfy Ms. Park’s claim—because Ms. Park has no claim against Cape PLC. Instead, he sued the Locke Lord (now Troutman Pepper Locke) law firm in *Park*,<sup>4</sup> and he filed a putative third-party case in *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759. It is from *Tibbs* that the various appellate matters arise. In this third-party action, the Receiver appears to be trying to artificially create liability for Cape PLC (and, apparently, for CIHL even though it isn’t even a party to the *Tibbs* case) by asserting a “self-piercing” claim that the law does not recognize, and by making allegations that the *Adams* Court fully considered and rejected a generation ago.<sup>5</sup>

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by the Receiver and counsel for asbestos plaintiffs to induce a South Carolina circuit court to make rulings that fly in the face of decades-old precedent from an English appellate court that disproves and bars the exact theory they are presenting below. Regardless of this Court’s displeasure with Justice Mann’s worldwide injunction against the Receiver, it cannot possibly be this Court’s expectation that an English court would treat the proceedings before the circuit court as legitimate when those proceedings run directly contrary to controlling case law from England that rebuts every assertion made below. Put differently, why would an English court recognize a ruling from the South Carolina circuit court that runs contrary to a controlling decision entered decades ago by an English appellate court about the exact same issue involving an English company?

<sup>4</sup> Troutman Pepper Locke has a motion to dismiss that “third-party complaint” and a motion to dissolve the receivership that have been pending unopposed, yet never addressed by the circuit court, since September 15, 2023.

<sup>5</sup> It is legally impossible for the Receiver to assert a third-party claim on behalf of an entity that isn’t even a defendant to the first-party case. Yet, that is exactly what he claims to be doing.

When the Altrad Defendants and others sought to undo the receivership, the Receiver himself requested that the appointment morph from one over Cape PLC (as Ms. Park had requested and the circuit court approved in *Park*) to one over CIHL. The circuit court, again with no formalities having been observed including service of notice to CIHL (meaning that personal jurisdiction could not possibly have attached to CIHL), obliged the Receiver's request, modified the prior receivership appointment (out of *Park* and into *Tibbs*), and created a new receivership (over CIHL). Those characteristics made the order immediately appealable pursuant to the unambiguous terms of South Carolina Code § 14-3-330(4), and neither the Receiver nor the Court of Appeals have identified any reason why an order that modified a prior receivership appointment, allowed that prior appointment to continue despite being exposed as faulty, and granted a brand new receivership is not squarely within the plain language of the appellate statute.

The propriety of that order is the subject of Appellate Case 2024-001499, which is the fountainhead for all other litigation activities that have followed, including the Altrad Defendants' and Charter Defendants' subsequent appeals. For their part, the Altrad Defendants (and the Charter Defendants) have done their very best to protect the record, preserve their issues, and not risk any sort of waiver, as the proceedings below are occurring without jurisdiction—including subject-matter or personal.<sup>6</sup>

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<sup>6</sup> The Altrad Defendants are not oblivious to the remarks in *Welch* regarding an unwelcome uptick in appellate filings that have come from the Asbestos Docket. But, with great respect, the job of any litigant in South Carolina has to be to preserve its issues and arguments for appellate review; bring issues to the higher courts when the appellate statute allows; and never risk waiver, as South Carolina jurisprudence is full of winning arguments that were waived before this Court could consider them. The Altrad Defendants have made their appellate filings and presented their arguments ***fully*** in good faith and ***fully*** in compliance with this Court's rules, South Carolina statutes, and South Carolina jurisprudence—and despite the Receiver's constant rhetoric and *ad hominem* attacks, he has never identified authority that rebuts the myriad arguments that the Altrad Defendants (and the Charter Defendants) have presented in support of their appeals.

### Welch's Remarks

As stated above, the Altrad Defendants file this Notice because *Welch* indicated that the Court saw no difference between the receivership(s) here and the receivership ruling in *Atlas Turner*. (Op. at 16.) *Welch* described “an English company”—again, presumably CIHL—as “the defaulting company” (*id.*), and as “being declared in default” (*id.*). *Welch* also stated the Court’s expectation that the English company would “fight the enforceability of the default judgment” in England, just as *Atlas Turner* will in Canada. (*Id.*)

Respectfully, these statements are not accurate. In fact, the two situations truly have nothing in common.

*Atlas Turner* was put into default in *Welch* after the circuit court held that it had personal jurisdiction over the company, and after *Atlas Turner* continued to buck the circuit court’s rulings regarding discovery in that case. And *Welch* is the case from which the *Atlas Turner* receivership appointment was ultimately issued. The scope of that receivership appointment was limited only to locating *Atlas Turner*’s “Insurance Assets.”

By contrast, neither Cape PLC nor CIHL was ever served with process in *Park*. Neither was subject to personal jurisdiction. Neither was ever in default. There are no defaults, no default judgments, no judgments at all, and no active claims against either entity in *Park*. Despite having none of the same litigation conduct that was present in *Welch*, the circuit court appointed a receiver over Cape PLC in *Park*—and never considered the threshold issue of personal jurisdiction.

Also unlike *Welch*, the appointment order in *Park* has zero limitations, and it gives the Receiver putative control over “all assets” of Cape PLC, including *inter alia*: “all accounts receivable,” “all rents due,” authority to “change locks,” authority to “open any mail” and to “redirect the delivery of any mail,” to “sell any real property and mineral interest,” all “financial

records,” to “move and store” its property, and “all storage facilities, safety-deposit boxes, real property, and leased premises” where any of Cape PLC’s property may be found. (Appointment Order at 2, attached hereto.)<sup>7</sup>

Also unlike *Welch*, there is no proof that Cape PLC or CIHL was ever served with process in *Tibbs* (to which CIHL isn’t even a party). As in *Park*, there are no defaults, no default judgments, and no judgments at all against either in *Tibbs*. The appointment order against CIHL came from *Tibbs*—but because CIHL is not a party in *Tibbs*, there cannot possibly be any personal jurisdiction over it.<sup>8</sup> This bears no resemblance to Atlas Turner’s litigation posture in *Welch*.

At bottom, the Court’s equating of Atlas Turner’s conduct in *Welch* with that of CIHL (or Cape PLC) in either *Park* or *Tibbs* appears to reflect a core misunderstanding of what has happened in this situation, and its description of CIHL (or Cape PLC) as “the defaulting company” with a “default judgment” is simply incorrect. Because the Court’s comments in *Welch* appear to reflect a misunderstanding about fundamental points of this case, the Altrad Defendants submit this Notice in support of their various pending certiorari petitions and, most respectfully, reinforce the urgency with which the Court should grant their petitions for certiorari review.<sup>9</sup>

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<sup>7</sup> The overwhelming breadth of the appointment order here runs squarely contrary to *Welch*’s admonition that a receiver must stay out of a company’s “business activities” and out of its “boardroom.” (Op. at 18.)

<sup>8</sup> The morphing of this receivership from securing assets to resolve Ms. Park’s non-existent claim into a receivership that appears to be aimed at self-piercing the corporate form of international companies to secure payments to the Receiver personally—after all, there is no claim in *Tibbs* pending against CIHL, so there is no way the Receiver can argue he is marshaling assets to satisfy any claims against CIHL—also runs squarely contrary to *Welch*’s admonition that a receivership appointment must be cabined only to finding assets to make whole the plaintiff responsible for the appointment. (Op. at 18.)

<sup>9</sup> As with their prior submissions, the Altrad Defendants file this Notice without waiving any of their prior objections or arguments, including those related to personal jurisdiction.

Respectfully submitted,

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