

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), 2024-001423 (Appointment of Receiver and Personal Jurisdiction), 2024-002114 (Mode of Trial), 2024-002117 (Contempt), and 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, 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.; Anglo American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party
Defendants,

of which

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

Appellants.

CHARTER DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (the “Charter Defendants”) respectfully supplement their petitions for a writ of certiorari seeking review of the circuit court’s orders that: (a) grant a new receivership over Cape Intermediate Holdings Limited (“CIHL”), which is a solvent, active U.K. company that has no contacts with the State of South Carolina and (b) modify and continue a receivership over Cape PLC, which is also a solvent, active Bailiwick of Jersey company that has no contacts with the State of South Carolina.¹ The Court’s recent decision in *Welch v. Advance Auto Parts, Inc.*, Op. No. 28284 (S.C. May 21, 2025) (“Welch Opinion”), makes reference to the receivership appointment(s) over “Cape” that is/are the subject of the pending certiorari petitions. The references to “Cape” in the Welch Opinion suggest that the record on this appeal needs to be clarified, including the facts and procedural posture underlying the “Cape” receivership – especially the Court’s statements that Cape was “declared in default.”² No Cape entity has been declared in default in either *Park v.*

¹ By making this filing, the Charter Defendants do not waive, but instead specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, including, *inter alia*, that: the Court lacks personal jurisdiction over each of the Charter Defendants; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed; the receivership appointment order(s) are void, the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited (“CIHL”); the Receiver lacks standing; the Receiver’s claims improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCPP; and these proceedings and the claims asserted and relief sought against the Charter Appellants violate their fundamental procedural and substantive constitutional rights and protections.

² In the Welch Opinion the Court compared Atlas Turner to Cape, and made multiple “findings” that suggests that it believes that a receivership is proper over a Cape entity because it was/is in default:

Armstrong International Inc., Case No. 2021-CP-40-02727(“Park”) (the case in which Mr. Protopapas was appointed receiver over Cape PLC) or *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759 (“Tibbs”)(this case where the Park receiver order was modified and/or a new receiver was appointed over CIHL). This Court should grant Charter Defendants’ petitions and allow the parties to fully brief the receivership issues related to “Cape” – which are markedly different from those of Atlas Turner as described in the Welch Opinion.

In *Park* it is undisputed that 1) no default was ever requested or entered against Cape PLC or CIHL, and 2) no affidavit of service (or any other evidence of personal jurisdiction over Cape PLC or CIHL) was submitted to or filed with the circuit court prior to the entry of the order appointing Mr. Protopapas as Receiver for Cape PLC. Neither Cape PLC nor CIHL made an appearance in *Park*, and Ms. Park did not move to have the circuit court appoint a receiver over Cape PLC until nine months after Ms. Park’s case resolved (App. 119–26.).³ The Park/Cape appointment order did not make a finding of personal jurisdiction over any Cape entity, and stated that a receiver was appropriate “because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape

We take a moment to discuss Atlas Turner's conduct in these cases and how it affects Receivership. Its conduct fits the strategy we earlier mentioned: to shun 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. That is in fact what an English company has done in another South Carolina asbestos case where the trial court appointed a Receiver. And an English court has gone along, ruling as a matter of private international law that the *defaulting company* did not submit to jurisdiction in South Carolina and English law will only enforce foreign judgments against a corporate defendant if the company has established a "fixed place of business" in the foreign forum. *Cape Intermediate Holdings Ltd. And Cape PLC v. Protopapas* [2024] EWHC 2999 (Ch), 13–14, 49–51. ... Shocking to American eyes, the English court enjoined the Receiver "from acting or purporting to act for or on behalf of" *the English company in default*, even in a South Carolina court. *Id.* at 61, 72.

³ 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,” mooting the trial setting. (App. 432.)

Asbestos Company Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case....” Justice Toal later acknowledged in the order denying Appellants’ motion to dissolve the receivership (that is the subject of this petition) that Cape had neither dissolved nor forfeited its charter. Accordingly, the only basis for appointment of the receiver over Cape PLC was that it “failed to answer this case,” notwithstanding the lack of proof that any Cape entity was ever served in *Park*.

In *Tibbs*, plaintiff named Cape PLC and CIHL as defendants but never filed any evidence of service of process as to these entities. In *Tibbs* it is undisputed that 1) no default was ever requested or entered against Cape PLC or Cape Intermediate Holdings Limited, and 2) no motion to appoint a receiver as to Cape PLC or CIHL was ever filed. Nonetheless, the Receiver (appointed in *Park*) responded to the *Tibbs* complaint on behalf of Cape, and then filed a third-party case against Appellants – not insurance companies – on a novel unjust enrichment self-veil piercing theory.

The Welch Opinion instructs that South Carolina trial courts are not permitted to appoint receivers before judgment “except in the rarest case”; that receiverships are not appropriate in a “typical default case”; and that the “extreme power” to appoint a Receiver “may only be used in extreme cases, such as where a defendant’s conduct demonstrates that it is fraudulently concealing or disposing of assets that may be responsive to a later judgment” or “there is danger that the property will be materially injured before the case can be determined.” See *Welch* Opinion, Section IV.A (citations omitted). None of these scenarios are present here. Unlike *Welch*, however, the *Park* record demonstrates that no Cape entity was served with a summons or complaint, made an appearance, or engaged in litigation. Indeed, the *Park* court did *not* make any findings that 1) Cape was properly served with service of process, 2) Cape refused (or failed) to comply with any court

orders, 3) Cape was in default, 4) Cape engaged in moral fraud, 5) Cape was fraudulently concealing or disposing of assets that might be responsive to a later judgment, 6) there was a danger that Cape's property would be materially injured before a judgment could be entered, 7) Cape was disobeying discovery orders, 8) Cape had made misrepresentations to the Court concerning the existence of assets that might cover the plaintiffs' alleged injuries, or 9) Cape was otherwise engaged in active wrongdoing.⁴

This Court found that Atlas Turner's litigation misconduct warranted a prejudgment receivership, but the Court nonetheless found it "appropriate [to] shrink the scope of the Receivership order." Specifically, the Court reasoned that equity required the receiver's powers to be strictly limited to marshalling insurance assets "that have the potential to cover Mr. Welch's injuries," and reversed and vacated the remainder of the appointment order granting the receiver control over "any other assets which are related to, touch or are otherwise relevant to such insurance." *Welch* Decision, Section IV.C. In the present case, insurance is not an issue, and the Receiver's claims against Appellants are not pending in *Park* or related to the *Park* plaintiff. Importantly, the *Welch* Opinion warned that the receiver's power "does not properly extend to reach every claim relating to Atlas Turner's assets and business activities," nor does the receivership order "grant the Receiver entry into the Atlas Turner boardroom or some vague right to 'take over' operation of the company." *Id.* In the present case, the Receiver is doing exactly

⁴ Compare the Welch Order Appointing the Receiver over Atlas Turner which made several findings of wrongdoing: 1) "by On May 11, 2023, this Court found Atlas to be in contempt of Court. The Court based its contempt order on Atlas' flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery."; 2) "this Court determined that striking Atlas' answer was the appropriate sanction for contempt of this Court's orders."; 3) "Now, having struck Atlas' answer, Atlas is in default."; 4) "Here it is exactly the moral fraud of Atlas' personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas continued refusal to participate in this that warrants the appointment of a receiver."; and 5) "Thus, where there is active wrongdoing and illegal refusal to comply with this Court's orders, the appointment of a receiver is appropriate."

what the Welch Opinion forbids. He responded to a Complaint against Cape (that was never served on Cape) filed in *Tibbs* and then filed a third-party claim in *Tibbs* (unrelated to the allegations filed by Park or Tibbs) against Appellants. The Receiver is attempting to “take over” decisions that belong to Cape’s board.

Following the guidance of the Welch Opinion, there was no basis whatsoever to appoint a receiver over any Cape entity, to continue and/or modify the appointment order (at the request of the receiver) once Appellants demonstrated its deficiencies, or to grant a new receivership in *Tibbs* over CIHL. The Charter Defendants submit this Notice of Supplemental Authority in support of their various pending certiorari petitions and urge the Court to grant their petitions for certiorari review.⁵

Respectfully submitted,

Dated: June 4, 2025

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⁵ Charter Defendants incorporate by reference and adopt all arguments and authorities raised by and/or included in Notice Of Supplemental Authority to Altrad Defendants’ Petitions for a Writ of Certiorari filed June 4, 2025, in 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) and which are consistent with the points raised herein. *Cf.* Rule 208(b)(6), SCACR (“In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another.”). See also *Stanley Smith & Sons, Inc. v. Dumas*, 315 S.C. 30, 33, 431 S.E.2d 595, 596 (Ct.App.1993) (the Court of Appeals took notice of the contents of the appellate record in another, unrelated case).