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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..... Petitioners.

MOHED ALTRAD AND ALTRAD INVESTMENT AUTHORITY S.A.S.'S RETURN TO MOTION FOR SANCTIONS

Third-Party Defendants Mohed Altrad and Altrad Investment Authority S.A.S. (collectively, the "Altrad Defendants"), without waiving but instead specifically preserving all of their objections to personal jurisdiction, respectfully submit the following return to the Receiver's Motion for Sanctions.

INTRODUCTION

The Motion does not identify any acts by the Altrad Defendants that violate Rule 269, SCACR, because there are none. While the Altrad Defendants have, subject to their jurisdictional objections, litigated vigorously in the trial and appellate courts in South Carolina, as is their constitutional right, they have always done so in good faith. Mr. Protopapas mistakes zealous advocacy for a generalized "defiance" warranting sanctions. Here, the complained-of actions were actually undertaken by Cape Intermediate Holdings Limited ("CIHL") and Cape PLC and were a legitimate exercise of their rights to challenge the alleged receiverships in their home forum, the United Kingdom. Even *Barton* itself recognizes the possibility of overreach by a receiver and holds that, "if, by mistake or wrongfully, the receiver takes possession of property belonging to another, such person ***may bring suit therefor against him personally as a matter of right***; for in such case the receiver would be acting ultra vires." *Barton v. Barbour*, 104 U.S. 126, 134 (1881) (emphasis added).

The sanctions request reveals the dilemma of the Receiver's artificial construct—he is asking the Court to sanction defendants for CIHL's and Cape PLC's conduct in England while at the same time pretending to act for those same English and Bailiwick of Jersey companies. The

Altrad Defendants have done nothing to intimidate or attack the Receiver—their actions have been to advance their positions vigorously. They did not procure the order of the High Court of England and Wales enjoining Mr. Protopapas from acting as a receiver. The respective boards of CIHL and Cape PLC instituted that action to assert their rights to control their companies rather than Mr. Protopapas, who in turn declined to appear in the action and defend his receivership.

While the legal position of the Receiver is vexed, constrained by conflicting court orders and contentions of ultra vires conduct, that position arises from a controversy between CIHL and Cape PLC, on the one hand, and the Receiver, on the other—it has nothing to do with the Altrad Defendants. On that basis alone, the Court should deny the Motion.

Nevertheless, Mr. Protopapas asks for sanctions against Mohed Altrad, an individual French citizen who has never set foot in South Carolina, and Altrad Investment Authority S.A.S., a French entity that has never done business in South Carolina, because CIHL and Cape PLC exercised their lawful rights and obtained an order in the United Kingdom to prevent the Receiver from making decisions in the place of CIHL's and Cape PLC's actual directors. He has no basis to claim sanctionable conduct against the Altrad Defendants.

The sanctions motion, however, highlights the foundational problems with this purported receivership—he is acting outside the bounds of his mandate, which has been procedurally flawed from inception. This Court recently affirmed as much in *Welch v. Advance Auto Parts, Inc.*, Op. No. 28284 (S.C. May 21, 2025). A receivership, prescribed only to marshal assets in the state, is not a license to enter into a company's "boardroom" or take over "business activities" of the company. *Id.* at 18. CIHL and Cape PLC, the entities purportedly in receivership, are an English company and a Bailiwick of Jersey company, respectively, with their own officers and directors. Both are solvent and have never been a judgment debtor in either *Park* or *Tibbs*. They should not

be in receivership and, exercising their own authority, each pursued legal rights in England and prevailed. This Court should not sanction CIHL or Cape PLC for their defense of their rights in the United Kingdom, much less the Altrad Defendants.

As this Court recently explained: "Our respect and spirit of comity—not to mention our duty to follow the law—does not permit us to enjoin a court of another sovereign nation from interfering with our rulings on the propriety of a Receivership." *Welch*, Op. at 17. Just as the Court cannot (and should not) interfere with the English courts, it cannot (and should not) sanction parties, or further, their affiliates, for exercising their legal rights in the United Kingdom, in France, or elsewhere. At some point, some court will need to address the clearly conflicting rulings and address the international comity issues, but not through a motion for sanctions.

FACTUAL BACKGROUND

I. Cape PLC and CIHL challenged the receivership in the United Kingdom.

While the facts may be familiar to the Court at this point, a brief summary follows. Cape PLC is a company organized in the Bailiwick of Jersey and was incorporated in 2011 and is a non-trading parent company of a group that is actively involved in the industrial services market entirely outside the United States. CIHL is a company organized under the laws of England and Wales in 1893 and serves as a non-trading holding company, which sits below Cape PLC, within the broader Cape Group of companies. Cape PLC, and thereby CIHL, was acquired by Altrad UK Ltd. in 2017 through acquisition of public stock. Both Cape PLC and CIHL are solvent, ongoing concerns operating internationally, but not in the United States. Neither company has contact with South Carolina.[1]

[1] The Receiver often refers to an office maintained in South Carolina by a different company that is within the Altrad universe of entities. But an office maintained by a company different from either of the Altrad Defendants does not equate to any contact in South Carolina by the Altrad

Nevertheless, Cape PLC has been subjected to a receivership order by the trial court (in the unrelated *Park* case)—without receiving statutorily-required notice, service of process or due process—that substitutes a receiver, Mr. Protopapas, for its duly appointed board and management. (Receivership Order in *Park* (filed as an exhibit with this Court on June 4, 2025).)

While Cape PLC has no assets, including insurance policies, in South Carolina for the Receiver to seize or oversee, the Receiver has taken it upon himself to file a third-party claim, purportedly in Cape PLC's name, against (1) the Troutman Pepper Locke law firm in *Park*; and (2) other companies and other affiliates, including the Altrad Defendants, in *Tibbs*. (Third-Party Complaint in *Tibbs* (June 30, 2023).) And when the errors of the original appointment were identified, the Receiver requested and the circuit court approved the creation of a new receivership over CIHL in *Tibbs*. That is the order for which the Altrad Defendants seek this Court's review in Appellate Case No. 2024-001499.

An unfair and untenable situation results: two companies outside the personal jurisdiction of a South Carolina court and without debts or assets in the state ostensibly have been usurped by a Receiver who actively disregards both their best interests and the directions of their actual management. Cape PLC and CIHL (not the Altrad Defendants) sought and obtained a judgment from the High Court of Justice Business and Property Courts of England and Wales, affirming decades-old precedent CIHL, holding that the Receiver has no authority to act on their behalf. *CIHL v. Protopapas* [2024] EWHC 2999 (Supp. App. 1–85) (the "Cape Judgment"). Mr. Protopapas was properly served with the UK action but chose not to participate.

Defendants, just as ownership of stock in Coca-Cola does not place a shareholder in Georgia. South Carolina law and due process confirms that to be the case.

Once the Cape Judgment was final, the Altrad Defendants sought recognition of the judgment in France.[2] Again, Mr. Protopapas was provided notice of this action but chose not to participate. The French court has recognized the validity and propriety of the Cape Judgment. *Cape PLC v. Protopapas*, Case DBYB-W-B7J-PM3N (Montpellier Court of Appeal Apr. 8, 2025) (provided to Court on May 19, 2025).

In response to these developments, Mr. Protopapas now seeks vague sanctions against the Altrad Defendants because Cape PLC and CIHL exercised legally available rights in England. Simply put, the Altrad Defendants have done nothing wrong and certainly nothing that rises to the level of sanctionable conduct. The motion should be denied.

II. There are conflicting judgments that raise important legal issues.

A. Comity, standing, and mootness are all at issue in this case.

The sanctions motion, however, raises important legal doctrines that will govern this dispute. The first is comity.[3] Comity refers to courts of one state or jurisdiction respecting the laws and judicial decisions of other jurisdictions—whether state, federal, or international—not as a matter of obligation but out of deference and mutual respect. *See, e.g.*, *Hilton v. Guyot*, 159 U.S.

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[2] French law allows for a procedure to recognize foreign judgments. This was not a direct action against the Receiver, but merely a recognition of the Cape Judgment under French law.

[3] Respectfully, there is a general misconception, perpetuated by Mr. Protopapas, that the English action resulting in the Cape Judgment was secondary to his appointment as Receiver. In other words, there is a belief that South Carolina was first, and the English court should have respected the Receivership Order. That is not the case. It has been the law since 1990 in the *Adams v. Cape Industries Plc* case that the English courts determined that CIHL had not submitted itself to jurisdiction in the United States and that, as a result, default judgments entered against CIHL would not be honored in the United Kingdom. *Adams v. Cape Industries plc* (1990) 1 Ch. 433 (CA) (Supp. App. 104–483). This opinion has stood the test of time and formed the basis for CIHL's conduct and operations. This opinion also forms the basis of the Cape Judgment. Since *Adams*, CIHL has done nothing to subject itself to personal jurisdiction in the United States. As to issues of comity and respect for decisions, the *Adams* case was first by decades, is controlling, and should be respected by the courts of South Carolina.

113 (1895). South Carolina has long adhered to principles of comity and respected the decisions of foreign courts. *See Bluewave Boat Rentals, Ltd. v. Collins*, 2016 WL 5720146, at *3 (D.S.C. Oct. 3, 2016) ("Two District of South Carolina decisions and a 1939 South Carolina Attorney General's opinion address how South Carolina courts should enforce judgments rendered by foreign countries against a South Carolina resident.").

The second legal principal is standing. "The principle of standing under the United States Constitution is 'an essential and unchanging part of the case-or-controversy requirement of Article III.'" *ATC South, Inc. v. Charleston Co.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Without standing, there can be no live dispute, and the case cannot move forward. Mr. Protopapas does not have standing to bring claims on behalf of Cape PLC or CIHL.

The third legal principal is mootness. Because Cape PLC and CIHL are functioning entities, they made the decision not to pursue the meritless claims against their affiliates, including the Altrad Defendants. In April 2025, Cape PLC and CIHL settled and executed mutual releases regarding their claims, if any, against the Altrad Defendants, including those purportedly asserted by Mr. Protopapas in this case. (Ex. A, Notice of Release filed with the Circuit Court on June 4, 2025.) With the alleged claims resolved, there is no action to be taken by this Court on the motion, and the case should be dismissed as moot.

B. There is no basis for sanctions—or the receivership.

Although not directly at issue int his motion, these three legal principles should compel the Court to dissolve the receiverships over CIHL and Cape PLC and dismiss the third-party claims allegedly brought on their behalf. An English Court has issued a final decision that Mr. Protopapas is not a bona fide receiver over Cape PLC or CIHL—Cape PLC and CIHL remain functioning,

solvent foreign corporate entities with their own directors, which is directly contrary to the Receivership Order.[4] Neither the CIHL board nor the Cape PLC board authorized the receivership, nor did either authorize any actions by Mr. Protopapas, and they certainly did not authorize the third-party action brought in their names that seeks to reject findings already established decades ago in *Adams*. Further, to clarify matters, the claims, if they even existed, have been released and resolved. (Ex. A, Notice of Release.)

In short, Mr. Protopapas has no basis to continue purportedly acting on behalf of either CIHL or Cape PLC and has no basis to seek sanctions against the Altrad Defendants, allegedly in the name of either foreign company.

The Motion for Sanctions should be dismissed.

ARGUMENT

I. There is no basis for sanctions, and certainly not against the Altrad Defendants.

A. Rule 269 does not apply.

Mr. Protopapas relies on Rule 269, SCACR, which states in relevant part:

> Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days' notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

By its terms, this Rule does not apply here. Mr. Protopapas's motion for sanctions does not fault the Altrad Defendants for "an appeal, petition, motion or return" filed in this Court. Nor does Mr. Protopapas allege that any such filing was "frivolous," "taken solely for the purposes of delay," or "not in compliance with" the rules of appellate procedure. To the contrary, everything that the

[4] Recall, this is not a "recent" determination, but a reaffirmation of the decades-old *Adams* decision.

Altrad Defendants have filed with this Court has been thoroughly cited with supporting law and have been aimed at fully defending these foreigners—a French individual, and a French company—against claims in a court lacking personal jurisdiction over them.[5] Rule 269 does not provide a basis for sanctions in this case.

Simply put, Mr. Protopapas misrepresents the standard for sanctions under Rule 269. The Motion relies only on a portion of Rule 269, with Mr. Protopapas claiming the Court can impose sanctions "as the circumstances of the case and discouragement of like conduct in the future may require." In so doing, the Receiver purports to establish an all-encompassing sanctions rule, taken out of context and untethered from the actual substance of Rule 269, or the conduct it was designed to discourage—frivolous filings brought for purposes of delay. Mr. Protopapas's position on Rule 269 is misleading.

Mr. Protopapas's citations are equally unavailing as he does not provide any support for his position that this Court possesses a roving sanction authority for any misconduct allegedly occurring anywhere in the world. He relies on *Fishbourne v. Murdaugh*, No. 3:24-CV-4472-JFA, 2025 WL 465751, at *3 (D.S.C. Feb. 11, 2025), which is a prisoner case wherein the prisoner had previously filed numerous post-conviction relief actions and habeas corpus actions and was prohibited from filing additional cases *in South Carolina* without permission from the court. Similarly, *Assa'ad -Faltas v. Kittredge*, No. 3:22-CV-923-TLW-SVH, 2023 WL 5044697, at *6 (D.S.C. July 19, 2023), involved a serial lawsuit-filer and courthouse visitor who was prohibited

[5] The absence of personal jurisdiction over the Altrad Defendants has been specifically raised for this Court's review in Appellate Case No. 2024-001499. The circuit court held that it could exercise jurisdiction over the Altrad Defendants from France (and all other third-party defendants from around the globe) based on a boundless "alter ego" theory that is not rooted in any purposeful contacts with South Carolina and, moreover, that is directly contrary to *Adams*. The Court should grant certiorari review to address this issue.

from filing further actions *in South Carolina*.[6] These cases stand in stark contrast to this case. Making filings required by South Carolina jurisprudence to preserve and pursue appellate issues is not analogous with filing multiple frivolous and harassing claims, and the cases cited by the Receiver are not remotely on point.

Mr. Protopapas has failed to identify any conduct that would justify sanctions under Rule 269. The motion should be denied.

B. The Altrad Defendants did not violate any order.

Not only does Mr. Protopapas fail to identify an appropriate rule that was violated, he also cannot identify a single order from this or any other court that has been violated. Instead, he argues that the Altrad Defendants "defied" (1) the Court's January 16, 2025 Order; (2) the Court's May 21, 2025 Order in *Welch*; and (3) the *Barton* Doctrine.[7] Mr. Protopapas's allegations can be easily dismissed for numerous reasons. In order to justify sanctions, the record must show that a party willfully disobeyed an order of the court. *Noojin v. Noojin*, 789 S.E.2d 769, 772 (S.C. Ct. App. 2016). No such order exists, and there has been no violation.

1. The January 16, 2025 Order in *Tibbs*

As noted, Mr. Protopapas cites to two orders from this Court that the Altrad Defendants "defied." The first is a January 16, 2025 order ***denying*** Mr. Protopapas's writ of supersedeas and a temporary restraining order. At that time, the Court was aware of CIHL's and Cape PLC's actions

[6] That serial filer had been involved in over *seventy* matters before South Carolina appellate courts over two decades and engaged in conduct such as approaching members of the Court at hotels, churches, and non-public areas of courthouses and was found to have engaged in "unrelenting efforts to contact and harass individual (current and former) Justices" of the Court. *City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 33–34, 800 S.E.2d 782, 784–85 (2017).

[7] To the extent the Court construes the Receiver's filing to suggest that the Receivership Order was violated by the filing of suits in England, again, that action was taken by Cape PLC and CIHL, not the Altrad Defendants.

and the Cape Judgment in England and chose not to restrain any of the parties from taking any action. If no party was restrained, and the order actually denied Mr. Protopapas's requested relief, the order cannot form the basis of allegedly sanctionable conduct for "defying" the order. There was nothing ordered that could be "defied."

In the January 16, 2025 Order, the Court stated in part:

> Any attempt by a foreign court to intervene in and threaten the participants in matters properly pending in the courts of South Carolina would be shocking and indefensible. 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.
>
> As an independent judiciary in a sovereign independent state, we are well-equipped to decide the issues presented to us. In the interim, all parties shall comply with all scheduling orders and rules, and all proceedings in these matters will continue in the ordinary course in the circuit court and this Court.
>
> Having addressed the underlying and legitimate concerns of the parties related to the English Court Order, we conclude there is no reason for a writ of supersedeas to be issued in these matters. Therefore, we deny the Receiver's emergency motion for supersedeas and motion to stay the filing deadlines.

Tibbs v. Cape PLC, Appellate Case No. 2024-000916, at 5 (S.C. Jan. 16, 2025). At best, this order directed the parties to comply with scheduling orders and rules, which the Altrad Defendants have done. There were no other orders directed to the Altrad Defendants, or anyone else, that were "defied."

2. The May 21, 2025 Order in *Welch*

The second alleged order is the Court's recent pronouncement in *Welch*. It goes without saying that the Altrad Defendants are not parties to the *Welch* case and were not ordered to do anything in that opinion. If anything, that opinion made clear that Mr. Protopapas should not be

taking actions outside of South Carolina and should not be trying to usurp the "boardroom" decisions and "business activities" of the respective officers and directors of CHIL and Cape PLC. *Welch*, Op. at 17–18. If Mr. Protopapas properly constrained himself to the legal limits of a receivership, rather than instituting meritless lawsuits against Cape affiliates, perhaps the Cape Judgment would not have been necessary. The Cape Judgment, and the award of fees, are a problem of his own making, not of anyone defying an order from this Court.

The *Welch* opinion, issued in another matter wherein the Altrad Defendants were not ordered to do anything and were not parties, cannot form the basis of sanctions against them.

C. The *Barton* Doctrine is of no consequence.

Mr. Protopapas next attempts to argue that the *Barton* Doctrine somehow forms a basis for sanctionable conduct. *Barton* is not an order, statute, or law—it is court-made guidance regarding claims against receivers, under very specific circumstances that do not exist here, and it is based on notions of comity. *See Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 358 (4th Cir. 2024) (explaining that *Barton* functions "as a matter of comity" and "custom"). Mr. Protopapas has provided no authority that *Barton*, a 19th Century U.S. Supreme Court opinion, could possibly apply to a foreign court hearing a claim brought by its own citizens alleging ultra vires conduct happening elsewhere. Further, while Mr. Protopapas argues *Barton* is inviolate, a closer examination confirms that is not the case.

1. *Barton* is inapplicable when the conduct is ultra vires.

As explained in *Barton*, "if, by mistake or wrongfully, the receiver takes possession of property belonging to another, such person may bring suit therefor against him personally as a matter of right; for in such case the receiver would be acting ultra vires." 104 U.S. at 134. Acts are ultra vires if they are "outside the scope of [the person's official] duties." *In re Foster*, 2023 WL

20872, at *5 (5th Cir. 2023) (citing *In re Ondova Ltd. Co.*, 914 F.3d 990, 993 (5th Cir. 2019) (per curiam)). "In such a case, the person whose property is taken may bring suit against the trustee personally without seeking leave of the appointing court." *Id.* (citing *Barton*).

Setting aside the fact that *Barton*, by its own terms, would not apply under the factual and procedural background here, CIHL and Cape PLC allege that Protopapas is operating ultra vires—he has exceeded the bounds of his legal authority, and *Welch* even confirms as much. Accordingly, CIHL and Cape PLC are allowed to challenge his ultra vires conduct in their home forum. *Barton* is not a bar to CIHL's and Cape PLC's English lawsuit—in fact, *Barton* specifically exempts that type of litigation, and *Welch*'s prohibition on a receiver attempting to seize "boardroom" decisions confirms that CIHL and Cape PLC were right to bring that action.[8]

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[8] Litigation decisions are quintessential "boardroom" decisions and "business activities." *See, e.g.*, *Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) ("The decision whether to bring a lawsuit is a 'decision concerning the management of the corporation and consequently is the responsibility of the directors.'" (quoting *Blasband v. Rales*, 971 F.2d 1034, 1048 (3d Cir. 1992))), *rev'd in relevant part by In re Cognizant Tech. Sols. Corp. Deriv. Litig.*, 101 F.4th 250 (3d Cir. 2024); *Muzek v. Eagle Mfg. of N. Am., Inc.*, Case No. 6:18-cv-199-REW-EBA, 2019 U.S. Dist. LEXIS 244216, at *5 (E.D. Ky. Oct. 23, 2019) ("Thus, directors rather than shareholders [or receivers] manage the business and affairs of a corporation. In other words, a decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation."); *cf. Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *22 (D.N.J. May 31, 2024) ("The Court affirms the Bankruptcy Court's opinion that under New Jersey state law, the text of the Receivership Order did not change the fact that WCD's Board of Directors [and not the Receiver] held the power to file for bankruptcy and properly did so."), *further appeal pending at* Case No. 24-2210 (3d Cir.). Even the South Carolina General Assembly recognizes that a business operating only through its actual directors can make the decision to file suit. *See generally* S.C. Code Ann. § 33-2-102(1) (providing "sue and be sued, complain, and defend in its corporate name" as the very first "general power" of a South Carolina corporation); *id.* § 33-8-101 (providing that, with limited irrelevant exceptions, "all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors"). And while federal receivers can be appointed to operate a business—like a "custodian" under South Carolina law for South Carolina companies, S.C. Code Ann. § 33-14-320(a)—Congress has specifically provided that such receivers can be sued for their actions taken "in carrying on business" without first seeking leave of the appointing court. 28 U.S.C. § 959(a). In other words, the same federal government that conceived of *Barton* has also

2. CIHL and Cape PLC must have an avenue to challenge the wrongful receiverships.

Further, a foreign entity must be given the ability to challenge a wrongful receivership purportedly created in the United States without subjecting itself to jurisdiction. It is undisputed that CIHL and Cape PLC are not present in the United States and there is no personal jurisdiction over those entities, in South Carolina or any U.S. court. There is no authority—and certainly not *Barton*—compelling CIHL or Cape PLC to come to the United States to challenge the wrongful receivership appointments, thereby potentially waiving personal jurisdiction in this and future cases. The proper avenue is the path they have taken and are required to take by *Adams*—to challenge the receivership in the courts where they are organized and rely on comity considerations, beginning with 1990's *Adams* appellate ruling, to prevail. Again, if Mr. Protopapas believed in the legitimacy of his appointments, he could have appeared to contest the challenge in the United Kingdom with his already-retained counsel. Instead, he never bothered responding to the correspondence asking him if he planned to attend, choosing instead to lash out against CIHL's and Cape PLC's lawyers—Winston & Strawn—by suing that firm and several of its individual lawyers in South Carolina and then pausing that prosecution once his suit had its desired effect.[9]

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confirmed that circumstances like those presented here do not prohibit claims against a receiver. Moreover, other litigants adverse to this same Receiver, including entities represented by former U.S. Solicitor General Paul Clement, understand *Welch* to prohibit the same "boardroom"-style activities in which the Receiver has attempted to engage here. (Ex. B, Packet of Correspondence Regarding *Welch* to the Third Circuit Court of Appeals and Texas Court of Appeals.)

[9] Mr. Protopapas's claims of "intimidation" and "coercion" ring hollow. Mr. Protopapas has a long history of suing lawyers and law firms that dare to oppose his actions. Examples of "receivership" cases in which he has sued or threatened to sue lawyers and law firms include: 2017-CP-42-04429 (Gallivan, White & Boyd, notably one of the counsel of record for the Receiver ***in this case***); 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 ***in regards to this receivership***); 2023-CP-40-03540 (Goldfein & Joseph); and 2024-CP-40-05397 (Winston & Strawn and several individual lawyers ***in regards to this receivership***).

CIHL and Cape PLC were well within their rights to challenge Mr. Protopapas's actions as being ultra vires. Mr. Protopapas is attempting to step into CIHL's and Cape PLC's respective boardrooms to force them to pursue lawsuits on their behalf against Cape affiliates—precisely what this Court prohibited in *Welch*. Mr. Protopapas has also attempted to subject CIHL and Cape PLC to liabilities by accepting service of lawsuits in the United States—precisely what *Adams* protected against 35 years ago. CIHL's and Cape PLC's obvious choice to challenge these actions was to do so in their home forum, as they do not operate in the United States. Mr. Protopapas, the alleged receiver of Cape, chose not to defend his actions in the United Kingdom or France.

Several courts have recently ruled that the extent of Mr. Protopapas's authority stops at the borders of the state of South Carolina. For instance, when he attempted to interfere with the "boardroom" decisions of Whittaker, Clark & Daniels, Inc.' directors to take bankruptcy after an asbestos judgment was entered against WCD in South Carolina, he was summarily rebuked. *See, e.g.*, *Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *22 (D.N.J. May 31, 2024) ("The Court affirms the Bankruptcy Court's opinion that under New Jersey state law, the text of the Receivership Order did not change the fact that WCD's Board of Directors [and not the Receiver] held the power to file for bankruptcy and properly did so."), *further appeal pending at* Case No. 24-2210 (3d Cir.). This case shows that receiverships, and Mr. Protopapas, are limited and, even with *Barton*, Mr. Protopapas cannot pretend to control the "business activities" or "boardroom" decisions of CIHL, Cape PLC, or anyone else, outside of South Carolina. *Welch*, Op. at 17–18.

3. Justice Mann considered *Barton.*

Mr. Protopapas also misrepresents the fact that the English court did not consider the *Barton* doctrine in its order. In fact, it was Mr. Protopapas who brought it up. Justice Mann noted

that Mr. Protopapas wrote a letter to the English court asserting that the *Barton* Doctrine prevented the action, and noting that Mr. Protopapas had sued Winston & Strawn, the law firm that originally brought the UK action. (Supp. App. 45–46, 69.) In considering the effect of *Barton*, Justice Mann concluded: "I consider that it does not stand in the way of the present proceedings because the present proceedings are governed by English law, and the whole premise of the proceedings is that the receiver has no recognition under English law. Accordingly, it does not recognise the office which would otherwise give him protection. It is therefore not a bar to the relief claimed against him in these proceedings." (Supp. App. 69.)

This is precisely what *Barton* itself prescribes: ultra vires conduct is beyond the scope of *Barton*'s comity concerns, and a receiver is personally liable for his or her ultra vires conduct. Mr. Protopapas is operating ultra vires, his actions are not valid under English law, and *Welch* confirmed as much as a matter of South Carolina law as well.

4. *Barton* applies to assets only, of which there are none.

Finally, *Barton* applies to claims or suits that affect the ***assets*** subject to receivership, and not the propriety of the receivership itself. As the Fourth Circuit recently explained, "Thus, when applying the *Barton* doctrine, the district court plausibly concluded that a federal court lacks jurisdiction over a state receivership or a state-court appointed receiver ***with respect to assets of the receivership*** because the state court has exclusive jurisdiction ***over the assets of the receivership***." *Protopapas*, 94 F.4th at 358 (emphasis added). The litigation in England did not involve a dispute over ***assets***—the dispute is over the receivership itself and the ability of the board and management of the Cape entities to proceed with their business without interference from or

the threat of a receivership from South Carolina, with which they have no contact. *Barton* is inapplicable to the English action.

D. The conduct, if any, was done by Cape PLC and CIHL, not the Altrad Defendants.

The gravamen of Mr. Protopapas's motion is that CIHL and Cape PLC sued him in the United Kingdom. True. But that action was carried out ***by CIHL and Cape PLC***, not the Altrad Defendants. The Altrad Defendants are not a party to the English action. While Mr. Protopapas now complains about the Cape Judgment, and the order for costs, he chose not to participate in that case, despite being properly served and having notice of the action.

CIHL and Cape PLC are fully-functioning foreign entities with no outstanding judgments entered against them in this case or in the *Park* case. Neither CIHL nor Cape PLC could come to South Carolina to challenge the receivership for fear of waiving personal jurisdiction, so they took action in their home country. If Mr. Protopapas is truly the receiver over CIHL and/or Cape PLC, he could have gone to their home country and established the propriety of his receivership over the English and/or Jersey entities, but he chose not to do so.

Once the Cape Judgment was entered, the Altrad Defendants affirmed the protections of that judgment in their home country of France. The Altrad Defendants cannot be blamed for seeking recognition of the Cape Judgment in their home country, *Barton* has nothing to say about that action, and doing so is certainly not sanctionable as a violation of any order of this or any other court.

II. The Court cannot issue a sanctions order without personal jurisdiction.

Even if the Court were to find some conduct potentially sanctionable, there has been no final determination of personal jurisdiction over CIHL, Cape PLC, or the Altrad Defendants. It is axiomatic that the Court must have personal jurisdiction over a party before issuing orders and

judgments affecting that person or entity. *See, e.g.*, *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992) (explaining the two-prong test for personal jurisdiction to satisfy due process concerns and stating that "[i]f either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process").

Here, the Altrad Defendants have properly challenged personal jurisdiction, and the issue has been specifically raised for this Court's consideration in Appellate Case No. 2024-001499. Unless and until there is a final determination as to personal jurisdiction, the Court cannot enter sanctions against the Altrad Defendants. *See, e.g.*, *Long v. McMillan*, 226 S.C. 598, 609, 86 S.E.2d 477, 482 (1955) (holding that "disobedience of a void Order, Judgment, or Decree, or one issued without jurisdiction of subject matter and parties litigant, is not 'contempt'"); *Kosciusko v. Parham*, 428 S.C. 481, 492, 836 S.E.2d 362, 368 (Ct. App. 2019) (quoting the same passage from *Long*).

III. The Court cannot issue sanctions because Cape PLC's and CIHL's purported claims against the Altrad Defendants are resolved.

Finally, this case, and any alleged claims, are moot because the claims purportedly asserted on behalf of CIHL and Cape PLC have been released. As noted, CIHL and Cape PLC have no interest in pursuing claims against their affiliates. Their directors never approved this action in the first place—Mr. Protopapas made it up. To make their corporate intentions clear, CIHL and Cape PLC released the Altrad Defendants:

2.1 Release by the Cape Parties.

The Cape Parties release the Altrad Parties and Sparrows Parties, from all Claims that the Cape Parties have, or may have had, against the Altrad Parties and Sparrows Parties, for any acts or omissions related to or arising from Allegations. This Release does not apply to any breach of this Agreement.

As part of this Release, and for the avoidance of doubt and without derogating from the generality of the foregoing, the Cape Parties hereby acknowledge and declare that the Altrad Parties and Sparrows Parties have, and at no material time have had, any liability to the Cape Parties (whatsoever and howsoever arising) in respect of the Allegations and the Claims made in the Third-Party Complaint.

The Allegations specifically cover the claims asserted in this case. (Ex. A.)

To the extent the Court ever had authority over the parties or the claims, they have been released. As this Court has clearly explained, "[t]he Receivership order does not grant the Receiver entry into the [Cape] boardroom or some vague right to 'take over' operation of the company." *Welch*, Op. at 17–18. The decision of the CIHL and Cape PLC directors must be respected. As the claims are released, there is no basis for sanctions as the Court no longer has jurisdiction over this matter.

CONCLUSION

Mr. Protopapas fails to identify any sanctionable conduct within the scope of Rule 269, and certainly nothing from the Altrad Defendants. What he has revealed is that he is improperly trying to control foreign companies—to their detriment, and in directly violation of this Court's unambiguous statements in *Welch*. He has no standing to continue the third-party claims, both because the claims are contrary to the directives from the CIHL and Cape PLC directors, and because the claims have been resolved and released. Accordingly, the Court should deny the Motion for Sanctions. If the Court deems it helpful, the Altrad Defendants welcome oral argument on this motion and all other issues pending with these petitions.

Respectfully submitted,

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