

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Jun 16 2025

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.

ALTRAD DEFENDANTS' RETURN TO THE RECEIVER'S MOTION TO STRIKE

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June 16, 2025

BACKGROUND

The Receiver filed his Motion to Strike the Notice of Supplemental Authority in furtherance of his strategy to have South Carolina appellate courts make decisions in this case—and about Defendants Mohed Altrad (a French citizen with zero connection to South Carolina) and Altrad Investment Authority SAS (a foreign parent company, again, with no connection to South Carolina)—without full briefing and without a full record. The Court’s comments in *Welch* indicate, perhaps, a misunderstanding of the differences between Atlas Turner and the entities involved in this case. The comments also indicate that the Court could benefit from full merits briefing and the submission of a full appellate record on the numerous pending appeals.

All any litigant can ask for is an opportunity to be heard. The Notice of Supplemental Authority provides a glimpse into some of the issues and should be maintained.

ARGUMENT

The Receiver’s Motion to Strike seeks to prevent this Court from properly reviewing the scope and breadth of the Cape Receivership and the significant differences between Atlas Turner, on the one hand; and Cape PLC, Cape Intermediate Holdings Limited (CIHL), and the third-party defendants, including the Altrad Defendants, on the other.¹

Welch Opinion

The Court made some concerning statements in the *Welch* opinion, comparing the conduct of Atlas Turner to that of CIHL (and, perhaps, Cape PLC as well). In *Welch*, the Court chastised Atlas Turner’s conduct: “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

¹ CIHL is not a party to *Tibbs*, the case from which the Receiver’s appointment over CIHL stems. This does not comport with Due Process. Further, CIHL cannot be a “third-party plaintiff” in a case to which it is not a “first-party defendant.”

to be friendlier soil.” The Court then directly compared Atlas Turner’s conduct to that of CIHL (and potentially of Cape PLC, too).

There is concern that the propriety of the Cape Receivership is being pre-judged through the Atlas Turner case. Respectfully, the Notice of Supplemental Authority sought to clarify issues for the Court. Without merits briefing and a full appellate record submitted for the Court’s consideration, the Court cannot truly appreciate the differences between this case and *Welch*/Atlas Turner, and appreciate the significance of the overreach of the Cape Receivership. The Notice of Supplemental Authority is necessary to demonstrate those distinctions; but even better, for the Court and for the parties, would be full appellate treatment of this matter through merits briefing and a full appellate record.

Rule 208(b)(7)

The Receiver argues the Notice violates Rule 208(b)(7), SCACR. While quoting that subsection, the Receiver ignores the Rule’s subject matter: “Initial Briefs.” Rule 208, SCACR. As the Rule itself states, it applies only *after initial briefs have been served and filed*. This does not apply in the current procedural posture, where the Altrad Defendants have put before the Court petitions for writs of certiorari on the court of appeals’ dismissals of the appeals below. And, even if Rule 208(b)(7) applies in this instance, it expressly contemplates, and in fact requires, parties to “state the reasons for the supplemental citations;” the Altrad Defendants have done just that.

Rule 242 contains no similar provision with regard to the “petition stage,” where these appeals are currently situated. In fact, the Rule that could be applicable to the procedural posture of this case—Rule 242(e)(2)—states: “If the matter was dismissed by the Court of Appeals for procedural or other reasons, the Appendix shall include any documents relevant to the dismissal including any motion to dismiss and any return or reply that may have been filed.”

Having a full record before the Court for its determination of whether to grant certiorari is particularly important in this instance because here: (1) there are novel questions of law (Rule 242(b)(1)); (2) the decision of the court of appeals is in direct conflict with prior decisions of the South Carolina Supreme Court (Rule 242(b)(3)); (3) substantial constitutional issues are directly involved (Rule 242(b)(4)); and (4) federal questions are included and the decisions of the circuit court conflict with decisions of the United States Supreme Court (Rule 242(b)(5)).

It is curious that the Receiver does not want such material to be part of the record; if he was assured of his actions, he would seemingly want this Court to have available to it all relevant materials and would be confident that he would win on the merits regardless of what is put before the Court. Instead, as he has done at every step, the Receiver has sought to entirely avoid engaging on the merits. Even so, the Receiver's argument that the content of the Notice is improper finds no support under the South Carolina Appellate Court Rules.

Judicial Notice or to Supplement the Record

The Altrad Defendants believe their Notice of Supplemental Authority to be entirely appropriate under the South Carolina Appellate Court Rules, particularly in light of this case's circumstances and procedural posture. However, should the Court determine that a "Notice of Supplemental Authority" is not the proper title for that filing, the Altrad Defendants respectfully request it be construed as a Motion to Take Judicial Notice, as everything cited in the Altrad Defendants' filing comes straight from the public record. *See* Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

Alternatively, the Court could consider the filing to be a Motion to Supplement the Record pursuant to Rule 212(b), SCACR. Pursuant to that Rule, the Court could grant the Altrad Defendants leave to provide the Court with this same additional material and pertinent information

already before the Court so it can properly address the Altrad Defendants' pending petitions for writs of certiorari. The Altrad Defendants stand ready to provide the requisite filing fee should the Court construe the filing as either of these proposed motions.

CONCLUSION

The Receiver seeks to use this Court's rules to achieve form over substance purely to avoid a full record of what's happened below; the Court should not permit such an outcome. The Court should also resist the urge to pre-judge the Cape Receivership and the appeals of the third-party defendants without the benefit of merits briefing and a full appellate record. For the Court and the parties, a full appellate process is necessary to a ruling in this case. The Notice of Supplemental Authority should be accepted but, more importantly, the Court should allow for full briefing with a full record in the pending appeals.²

Respectfully submitted,

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² 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.