

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

**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), 2024-001423 (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; 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

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

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CHARTER DEFENDANTS’ RETURN TO MOTION TO STRIKE

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Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (collectively, “Charter Defendants”),<sup>1</sup> by and through undersigned counsel, respectfully submit this return to the June 4, 2025 Motion to Strike Appellants’ Notice of Supplemental Authority (“Motion to Strike”) filed by Peter D. Protopapas, the purported receiver for Cape<sup>2</sup> (“Receiver”). For the reasons set forth herein, the Motion to Strike should be denied.<sup>3</sup>

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<sup>1</sup> By continuing to prosecute Appellate Case Nos. 2024-000916, 2024-001423, 2024-002114, 2024-002117, and 2025-000052 (collectively, 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.

<sup>2</sup> The Receiver and others have applied a shifting definition of “Cape,” sometimes to mean Cape PLC, at other times to refer to Cape International Holdings Ltd., and sometimes to refer to both entities collectively. When using the term “Cape” herein, the Charter Defendants have attempted to use the term in the same way used by the Receiver, but in doing so do not waive any objections to the improper continuation and modification of the Cape PLC receivership.

<sup>3</sup> The Charter Defendants also incorporate by reference and adopt all arguments and authorities raised by and/or included in the Altrad Defendants’ Return to the Receiver’s Motion to Strike filed on June 16, 2025, in Appellate Case

This is an atypical situation. Appellants’ June 4, 2025 Notice of Supplemental Authority (“Notice”) involves the Court’s May 21, 2025, opinion in *Welch v. Advance Auto Parts, Inc., et al.* (“*Welch*”), opinion no. 28284 (“*Welch* Opinion”). Although the *Welch* record is devoid of any mention of Cape, the *Welch* Opinion includes a four paragraph discussion of “Cape” that overlaps with issues presently pending before the Court in the Charter Defendants’ Petitions for Certiorari. While this alone is unusual, the *Welch* Opinion seems to indirectly address one of the primary issues in the pending Petitions for Certiorari – the propriety of the appointment of a receiver over any “Cape” entity. In the *Welch* Opinion, the Court stated that “in fact what [Cape] has done in another South Carolina Case asbestos case where the trial court appointed a Receiver” was to “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.”

Unfortunately, whatever source the Court used to determine the “fact[s]” regarding the “Cape” receivership is inaccurate. A review of the record in the pending Petitions for Certiorari will demonstrate that it is undisputed that in the case(s) where a receiver was appointed over a Cape entity 1) no Cape entity was “declared in default,” and 2) no “default judgment” was entered as to any Cape entity. Further, as demonstrated by the Charter Defendants and others in the record in this case, no Cape entity ever made an appearance and no South Carolina Court ever obtained (or claimed to obtain) personal jurisdiction over any Cape entity. Nonetheless, apparently relying on misinformation, the Court made further statements in the *Welch* Opinion suggesting the legitimacy of a receivership over Cape assets: “Shocking to American eyes, the English court

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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).

enjoined the [Cape] Receiver "from acting or purporting to act for or on behalf of" the English company in default, even in a South Carolina court." *See Welch*, p. 17.

The Charter Defendants are not parties to *Welch* and were not parties to that appeal. Thus, they had no procedural avenue in *Welch* to challenge the Cape receivership-related misperceptions in the *Welch* Opinion in that action. However, it is imperative to the Charter Defendants that the issues be brought to the Court's attention and that they not be bound by the inaccuracies in the *Welch* Opinion. Accordingly, raising the issues in the form of a notice of supplemental authority seemed most appropriate. However, as stated above, this situation is far from normal. If the Charter Defendants should have raised the issues in a different procedural manner, they respectfully request that the Court accept their filings – and consider the substance over the form.

To that end, the Notice serves to apprise the Court of the potential impact of the *Welch* Opinion on the Charter Appeals and its mistaken description of the circumstances giving rise to the Receiver's appointment in Cape. This error in *Welch* could lead to an unwarranted result in the Charter Appeals, necessitating submission of the Notice so that the Court will have the correct facts before it when considering the Charter Appeals. There is also a significant risk of subsequent misapplication of the *Welch* Opinion by future litigants, as well as that the Receiver and/or trial court will rely on the *Welch* Opinion's "Cape" findings in *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759 ("*Tibbs*"), the action underlying the Charter Appeals.

More specifically, *Welch* involves a different Protopapas-helmed receivership (the "Atlas Turner receivership") and the circumstances giving rise to the striking of Atlas Turner's answer, the trial court's declaration that Atlas Turner is in default, and the appointment of a receiver over Atlas Turner's insurance assets that "have the potential to cover Mr. Welch's injuries." *See Welch* Opinion, p. 18. The *Welch* Opinion stated that the appointment of a receiver "is an extraordinary

remedy reserved for the most extraordinary cases” that is “not to be used in the typical default case.” See *id.*, p. 19. The Court explained that the Atlas Turner situation, however, was not the typical default case and upheld the appointment of the receiver because Atlas Turner committed a litany of bad acts in *Welch*, such as making overt misrepresentations to the trial court.

Cape did not commit any such bad acts in *Park v. Armstrong International Inc.*, Case No. 2021-CP-40-02727 (“*Park*”), the action in which the Receiver was initially appointed over Cape PLC, or *Tibbs*, as no Cape entity made an appearance in either of those cases. Nevertheless, in dictum, the *Welch* Opinion incorrectly likens the Cape receivership appointment to the Atlas Turner receivership appointment:

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 [Cape] has done in another South Carolina asbestos case where the trial court appointed a Receiver.

See *Welch* Opinion, p. 16. There is no factual basis for this comparison.

Further, the *Welch* Opinion identifies entry of default as a steppingstone to the pre-judgment appointment of the Atlas Turner receiver, and no such entry of default exists with regard to the Cape receivership. As discussed above, Cape was never declared in default in *Park* or *Tibbs*, the latter of which is the action underlying the Charter Appeals in which the Receiver’s appointment was challenged and the trial court issued the order now on appeal, which upholds an initial receivership appointment over Cape PLC and expands the appointment (granting a new appointment) over Cape Intermediate Holdings Ltd.

While the references to Cape in the *Welch* Opinion are not essential to the decision in the case and are thus dictum, this issue must be addressed out of an abundance of caution. As the Court

of Appeals has cautioned, “those who disregard dictum, either in law or in life, do so at their peril.” See *Yaeger v. Murphy*, 291 S.C. 485, 491, 354 S.E.2d 393, 397, fn. 2 (1987).

Here, given that the grounds and lack of basis for the Receiver’s appointment over “Cape” are the direct subject of the Charter Appeals, it is crucial that the Court understand what happened – and did not happen – with regard to Cape receivership appointment order(s). Accordingly, the Charter Defendants’ Notice bringing these issues to the attention of the Court was appropriate and warranted, as the perils of leaving these misconceptions uncorrected are manifold, both in the context of the Charter Appeals and the trial court’s perception of this Court’s view of the appointment of a receiver over Cape. In fact, within a few days of the *Welch* Opinion, the Receiver requested a trial date from the trial court and cited to the *Welch* Opinion’s language about Cape as the basis for its request. See May 27, 2025, Interim Status Report of the Cape Receiver and Request for a Trial Date (“Status Report”), attached hereto As Exhibit 1.<sup>4</sup>

The Notice is also proper because it informs the Court of pertinent and significant findings in the *Welch* Opinion that directly relate to issues raised by the Charter Appeals. First, the *Welch* Opinion indicates that the rare and drastic remedy of receivership was justified only because of the findings of serious, continual misconduct by Atlas Turner in that case, including but not limited to alleged affirmative misrepresentations made by Atlas Turner to the *Welch* court. As set forth more fully in the Notice, Cape has not been accused of such misconduct in *Park* or *Tibbs*, and thus the *Welch* Opinion draws a critical distinction between the two receiverships.

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<sup>4</sup> While the Charter Defendants disagree with the Status Report’s arguments and application of the *Welch* Opinion, the Receiver does concede several issues that should be important to this Court, such as: the Cape receivership does not involve the pursuit of insurance assets and no insurance companies have been sued (see Status Report, p. 14); although the Receiver was ordered in the appointment order to act in the best interests of Cape, the Receiver’s claims involve what the Receiver has “admitted” to be Cape’s wrongdoing (see *id.*, p. 4); the Receiver’s plan is to speak/act on behalf of Cape to prove liability against Cape (see *id.*); although there has been no judgment in *Tibbs* to be collected, the Receiver’s plan is to attempt to pierce Cape’s corporate veil and sue Cape’s former shareholders and their alleged present owners under a cause of action of unjust enrichment (see *id.*, p. 12).

Second, the *Welch* Opinion indicates that even in the face of such misconduct, a South Carolina receiver's power is limited in scope. This goes to the heart of core questions in the Charter Appeals: where a receiver is appointed over an active foreign entity, are his actions: 1) limited to those that benefit the plaintiff who made the motion for his appointment?; 2) limited to the case in which he was appointed?; and 3) limited to the marshalling of South Carolina assets or insurance policies? Also, may a receiver make boardroom type decisions such as determining to sue its former shareholders and/or determining to waive personal jurisdiction for litigation asserted in foreign jurisdictions by accepting service of a complaint? Also, may a receiver ordered to act in the best interest of Cape make admissions of stunningly vast liability against that entity's will, and then bring third-party claims fashioned out of those unauthorized admissions.

Third, the *Welch* Opinion indicates that a court must have personal jurisdiction over an entity before a receiver may be appointed over it. Here, such personal jurisdiction was never obtained. As a result, it is critical that the Court consider its recent findings in the *Welch* Opinion when evaluating the Charter Appeals, and thus the Notice advising the Court of these holdings in *Welch* was proper.

Lastly, the Charter Defendants address the Receiver's attacks on the procedural aspects of the Notice. Again, the Charter Defendants respectfully ask the Court to consider their submission in the light of considering substance over form. Additionally, while the Receiver complains that the Notice should be stricken as a thinly veiled motion for rehearing of the *Welch* Opinion, this assertion is directly contradicted by the facts. The Charter Defendants are not parties to *Welch* and are therefore not asking to be "re-heard" in a matter in which they were never heard in the first place. Instead, they have simply filed a Notice advising the Court of a recent pertinent and significant authority that has come to their attention – the *Welch* Opinion – which not only

addresses some of the questions raised in the Charter Appeals, but also misstates the circumstances giving rise to the Cape receivership at issue in the Charter Appeals. Providing notice of the *Welch* Opinion, including clarifying inaccurate facts directly relating to the receivership at issue here, is fully appropriate.

The Motion to Strike's argument that the Court should disregard the Notice because it is in letter format is likewise immaterial. Whether submitted as a letter or otherwise, the Notice identifies critically important points raised for the first time in the recent *Welch* Opinion, and therefore it is properly considered by this Court in any form.

In conclusion, although the Receiver seems desperate to keep the Court from understanding the genesis of the Cape receivership and applying the *Welch* Opinion's holdings to the Charter Appeals, nothing in the Motion to Strike provides grounds to shield the Charter Appeals from *Welch*'s clear pronouncements about the sparing use and narrow scope of receiverships in South Carolina. Accordingly, the Charter Defendants respectfully request the Court deny the motion to strike and consider the Notice submitted with regard to the impact of the *Welch* Opinion on this case. It is telling that the Receiver, whose actions have gone well beyond the *Park* case in which he was appointed and far exceed marshalling South Carolina insurance assets, is going to great lengths to prevent this Court from considering the merits of this matter. Nonetheless, regardless of what the Receiver may argue, he should not be allowed to escape the *Welch* Opinion's impact on the Charter Appeals, which supports the granting of the Charter Defendants' certiorari petitions before this Court.

Signature on following page.

Respectfully submitted,

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