RECEIVED

Oct 02 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

CONCERNING AN APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2024-001423 and 2024-001499

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 MOTION TO SUPPLEMENT THE RECORD

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

Attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS

October 2, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

The Receiver recently moved to supplement the record regarding his motion for sanctions to include a new French filing in which the Receiver is a defendant in his personal capacity resulting from his tortious, *ultra vires* acts. In that motion, the Receiver mischaracterized the basis of that litigation as an "attack on the arm of the South Carolina Court." (Receiver's Mot. at 3 n.2.) That description is simply untrue. The French litigation is aimed at making the Altrad Defendants—a French company and a French individual—whole for the damage caused by the putative Receiver when the Receiver has acted ***without authority***.

As far as this litigation goes, the putative Receiver has never been an "arm of the South Carolina Court," as there has never been an order that complies with South Carolina law authorizing him to take the extraordinary measures he has attempted to take in the name of "Cape."

The Court granted the Receiver's motion to supplement the record before the Altrad Defendants' time to respond to that motion arrived. Respectfully, the Altrad Defendants believe that, for completeness, the Court should further supplement the record with additional case law and materials that have come to light following the Court's remand order. As explained below, these new authorities and new information make clear that the sanctions motion should be denied, that this litigation has been void from the outset for lack of jurisdiction, and that the claims at issue have been extinguished. This case should end, and the additional information discussed herein is key for the Court to fully consider the issues before it.

EXECUTIVE SUMMARY

This motion responds to the Receiver's motion to supplement the record regarding his motion for sanctions. The Altrad Defendants' additional supplemental authority and information affirmatively establish the following:

- There is currently no appointment order, and there never has been, authorizing Mr. Protopapas to act in the *Tibbs* case, which stands in direct violation of this Court's June 26, 2025 Order (*see infra Receivership Principle 2*).

- There are multiple courts in multiple jurisdictions, both within and outside the United States, which have found that any receiver, expressly including Mr. Protopapas, who attempts to operate outside the boundaries of South Carolina is in violation of fundamental constitutional limitations. Those courts have also affirmed this Court's ruling in *Welch* that a receiver is prohibited from making "boardroom" decisions (*Receivership Principle 4*).

- Neither Cape plc nor Cape Intermediate Holdings Limited (CIHL) is a judgment debtor as it relates to either *Park* or *Tibbs*, and there has never been any finding of "extraordinary" circumstances to justify the appointment of a receiver over Cape plc or CIHL (*Receivership Principle 3*).

- There are now two different orders from the High Court of Justice in England and Wales enjoining Mr. Protopapas from acting as a receiver for CIHL on authority of English Law as the governing jurisdiction of CIHL.

- Any attempt to attach liability to CIHL for the conduct of NAAC (a long-defunct Illinois company) in the United States is an improper collateral attack on *Adams v. Cape Industries plc* and a long line of English jurisprudence that has affirmed *Adams*.

- CIHL and Cape plc, under the authority of their boards of directors and as affirmed by the Business and Property Courts of England and Wales, have released all claims against the Altrad Defendants (*Receivership Principle 4*).

- A court cannot appoint a receiver over any portion of a defendant's assets without personal jurisdiction over that defendant (*Receivership Principle 1*).

BACKGROUND

On May 21, 2025, this Court partially reversed an order issued from the Asbestos Docket involving a receivership appointment over the assets of an active Canadian company, holding that the circuit court erred by authorizing the Receiver to secure private corporate assets beyond those necessary to pay the specific claim of that plaintiff. And it reiterated that the Receiver must stay out of that private company's "boardroom" and "business activities." *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (S.C. 2025), *petition for cert. filed at* Case No. 25-213 (U.S. Aug. 18, 2025).

Then, on June 26, 2025, the Court remanded this matter with explicit instructions to ensure that all receivership activity in the Asbestos Docket complied with South Carolina law, including *Welch*. *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 *et al.* (S.C. June 26, 2025).

At the first hearing following remand, the circuit judge expressed her belief that, based on *Welch* and *Tibbs*, this Court must not be "completely aware of how receiverships are used in South Carolina." (*See* 3d Supp. App. 228, Hr'g Tr. 17:21–25 (July 22, 2025) ("I also think that it [*Welch*] and the *Tibbs* case and its third-party receivership is the subject of all this illustrates that the [Supreme] Court is not completely aware of how receiverships are used in South Carolina.") (remarks of Judge Toal).) Since that hearing, the circuit court has charted a course on remand that is incompatible with this Court's recent rulings, longstanding South Carolina law, the United States Constitution, international law, and this Court's express instructions in the *Tibbs* remand order.

The Altrad Defendants appreciate that the Court may be fatigued from filings in cases involving receiverships and the Asbestos Docket. This motion is not meant to further any frustration the Court might feel, but instead is aimed at bringing to the Court's attention additional materials and information following its remand order that should assist the Court in bringing closure to this situation. Accordingly, this motion is organized into three sections: (1) a discussion of the framework for receiverships; (2) an update on how various courts have addressed issues arising from the circuit court's receivership appointments since the *Tibbs* remand; and (3) an update on the status of proceedings below following remand, which reveals the receivership at issue in this case to have been a legal nullity from the start.

FRAMEWORK FOR RECEIVERSHIPS

Welch and *Tibbs* confirmed the narrow parameters within which a receivership appointment must fit and the limited role a receiver can lawfully play pursuant to an appointment under Title 15 of the South Carolina Code. The Court was correct to confirm these limiting principles, as a receivership appointment amounts to the government authorizing the seizure of private property before a judgment is even entered—which is why it is rightly called a "harsh and drastic remedy." *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 91, 172 S.E. 787, 788 (1934).

Title 15's framework for receiverships (as confirmed by *Welch*, *Tibbs*, and a century's worth of jurisprudence) has several pillars that are designed to eliminate or mitigate risks that come with potential overreach by a receiver or an appointing court, including:

Principle 1: A court cannot appoint a receiver over any portion of a defendant's assets without first having personal jurisdiction over that defendant.

This is a threshold constitutional point and was specifically recognized in *Welch*, where the Court held that personal jurisdiction attached to Atlas Turner because Atlas Turner had directly sold asbestos-containing insulation products to a Greenville supplier that may have caused that plaintiff's injury. 445 S.C. at 657, 916 S.E.2d at 329. Without personal jurisdiction, of course, a court is powerless to act. *See, e.g.*, *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 509 (2005) ("Without minimum contacts, the court does not have the 'power' to adjudicate the action."); *see also Welch*, 445 S.C. at 668, 916 S.E.2d at 335 ("We have yet to see an asbestos case where the trial court has exercised personal jurisdiction over a defendant that did not meet the level of minimum contacts with our state that due process demands. If we were to see one, we would not hesitate to hold that the South Carolina courts lack jurisdiction.").

<u>Principle 2:</u> A receiver can only act in the case in which he or she is appointed and can only secure assets needed to pay the claim of the party responsible for seeking the appointment.

This baseline point comes straight from both *Welch* and *Tibbs*. In *Welch*, this Court reversed in part a receivership appointment from the Asbestos Docket because it exceeded the scope of what a receiver can lawfully do. 445 S.C. at 667, 916 S.E.2d at 334–35. It held that: (1) a receiver can only be authorized to marshal an asset needed to pay a debt owed to the party responsible for the receiver's appointment; (2) as a natural corollary, a receiver's activity is limited to the case in which he or she was appointed; and (3) a receiver must stay out of the "boardroom" and "business activities" of the company when marshaling a specific asset. *Id.*

The Court reiterated these points in *Tibbs*, where it heavily cited its *Welch* opinion and then stated ***without condition or exception***: "The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." *Tibbs* ¶ (A)(1).

Welch and *Tibbs* are consistent with the state receivership statutes, which allow only a "party" to seek the appointment of a receiver and does not contemplate a roving receiver or a receivership being established without the specific request of a "party." S.C. Code Ann. § 15-65-90; *see, e.g.*, *White v. Britton*, 72 S.C. 175, 179, 51 S.E. 547, 548 (1905) (vacating an order appointing a receiver where the order was entered "by the Circuit Judge on his own motion" and "no application by either party was made for such appointment").

Acknowledging the gravity of a receivership appointment, the General Assembly built in safeguards. Specifically, the receivership statute directs that "the party procuring the appointment" is responsible for paying all "costs," "charges," "expenses," and "actual damages" that flow from an improper appointment. S.C. Code Ann. § 15-65-90. This cost-shifting aspect of the receivership statute underscores the limited nature of receiverships and reiterates this Court's longstanding

admonition that they must be used sparingly and that only a "party" can seek a receivership, as only the "party" alone bears the consequences of an improper appointment.

<u>Principle 3:</u> A receiver is not to be appointed prejudgment absent extraordinary circumstances, such as a clear danger that the property in dispute will be materially injured during litigation or when a debtor's litigation conduct demonstrates that it is fraudulently concealing or disposing of assets.

This point has been reiterated countless times by the Court, and it was reinforced in both *Welch* and *Tibbs*. To be sure, *Tibbs* reminded that "appointing a receiver before judgment is permissible only in the 'rarest' and 'most extraordinary' cases." *Tibbs* ¶ (A). And *Welch* explained that a prejudgment receivership is improper in the absence of in-litigation conduct amounting to "moral fraud" regarding the property in dispute. 445 S.C. at 661–62, 916 S.E.2d at 331–32. This has always been the law. *See, e.g.*, *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 221–23, 66 S.E. 177, 179–80 (1909) (finding that the defendant's and his sister's sworn statements as to the defendant's finances gave rise to an "inference that there has been a fraudulent disposition of the property" justifying a receiver).

<u>Principle 4:</u> A receiver cannot make "boardroom" decisions or be involved in the "business activities" of a company over whose asset he or she has been appointed.

This prohibition comes unequivocally from *Welch*, and it goes hand-in-glove with a bigger point that often appears to be overlooked in the Asbestos Docket: a Title 15 receivership is a remedy that targets only specific, discrete assets that may be in dispute, ***not*** companies as a whole. This stands in stark contrast to a Title 33 custodian or a Title 33 receiver, which is the only situation in which the South Carolina Code permits a court to appoint a third party who can involve him- or herself in the business functions of a corporation (and it limits that authority to South Carolina corporations, at that). *Compare* S.C. Code Ann. § 15-65-10 (authorizing appointment of a receiver

with respect to "property"), *with id.* § 33-14-320 (authorizing appointment of a receiver or a custodian in conjunction with proceedings to judicially dissolve a South Carolina corporation).

Decisions on how or whether to accept service of process, defend claims, file affirmative claims, and undertake other litigation activities are quintessential "boardroom" and "business activities" of a company that are beyond the reach of a Title 15 receivership order. *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 unrelated 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.").

This is particularly so in South Carolina, where the General Assembly recognizes that all corporate authority—including litigation decisions—belongs to the directors. *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.* § 33-3-102(7) (providing "make contracts" as a "general power" of a 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").

Other courts have applied this same principle to this same Receiver. *See, e.g.*, *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, ___ 4th ___, 2025 U.S. App. LEXIS 23439, at *16–22 (3d Cir. Sept. 10, 2025) (holding that "Whittaker's board retained authority over those corporate decisions reserved to it by New Jersey law, including the decision whether to reorganize by filing for bankruptcy," and rejecting the Receiver's argument that an order from the South Carolina Asbestos Docket authorized him to speak for the company on issues of litigation or to override the decision of the corporate board).

Principle 5: Because the limited purpose of a receivership is to "receive" specific property and preserve it for the sole purpose of satisfying a judgment or protecting the property from being squandered or hidden during litigation, an order appointing a receiver must also set a bond sufficient to release that property from receivership.

In order to relieve a defendant of the "extreme" burdens of having its property seized by a receiver before a judgment is in place, the General Assembly requires any such appointment order to include a bond that will allow the defendant to reclaim its property and extinguish the receivership. S.C. Code Ann. §§ 15-65-50 ("No receiver shall be appointed before judgment when bond is offered.") and -60 ("Effect of bond given after appointment; return of property."). *Welch* reinforced this requirement as well. *See* 445 S.C. at 667, 916 S.E.2d at 335 ("Finally, we note Atlas Turner retains the right to post a bond to lift the Receiver appointment.").

NEW AUTHORITIES

Following the Court's remand order at the end of June, additional decisions have been issued from courts globally that address aspects of the receiverships from the South Carolina Asbestos Docket. The Altrad Defendants are aware that this Court has previously criticized such authorities. However, upon careful examination, the Court will see that these authorities are grounded in several of the same legal principles described above and underscored by the Court in *Welch* and *Tibbs*.

The first, from Canada, protects a Canadian company from the exposure to claims that the Receiver has brought. The second, from the Third Circuit, rejects the Receiver's argument that he can override decisions of a company's directors. And the third, from the United Kingdom, pairs these two points to enforce a mutual release of claims, executed by the directors of foreign companies, that brings an end to this litigation. Each is discussed below.

I. *In re Plan of Arrangement or Compromise of Asbestos Corporation Limited*, Case No. 235-11-000008-259 (Superior Court of Quebec, July 30, 2025).

As the Court is aware, the Receiver's conduct caused Asbestos Corporation Limited (ACL) and its insurers to seek protection in Canada's courts. In a July 30, 2025 order, a Canadian court considered whether it should extend a litigation stay under the Companies' Creditors Arrangement Act that had been in place on claims against ACL. Over an objection from asbestos plaintiffs' counsel, the court granted the extension.

As part of its analysis, the Canadian court examined why ACL needed to seek protection in the first place. It explained that Judge Toal purported to give the Receiver the "extraordinary powers" to control all aspects of ACL's litigation—including "to manage ACL's defense in all proceedings in the United States, to select the attorneys to represent it, and to decide alone whether to file a contestation or enter into settlements." (3d Supp. App. 8, Order ¶ 22.) The court noted that Judge Toal's receivership order had "seriously compromised" ACL's ability to defend itself in litigation and created "a race to the courts." (*Id.* ¶¶ 22–24, 69–70.) It further described the receivership order as "astonishing in the eyes of a court rooted in Canadian (or British) judicial culture." (*Id.* ¶ 23.) Because of the significant adverse effects the Receiver's conduct had on ACL's ability to defend itself and to reasonably resolve claims, the court determined to keep the litigation stay in place. (*Id.* ¶¶ 68–98.)

It is critical to note that the points motivating the Canadian court's ruling are the exact points on which this Court reversed the circuit court in *Welch*: the Receiver's attempt to involve himself in "boardroom" decisions (like litigation defense) and his activity outside of the single case in which he was appointed forced ACL to seek court protection. That decision harmonizes with this Court's own jurisprudence and informs the situation presented here.[1]

II. *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, ___ 4th ___, 2025 U.S. App. LEXIS 23439 (3d Cir. Sept. 10, 2025).

This opinion marks the third court to reject the Receiver's argument that a receivership appointment from the South Carolina Asbestos Docket gave him authority to override a decision by the Whittaker, Clark & Daniels directors to commence bankruptcy proceedings. Affirming rulings by both the bankruptcy court and the district court, the Third Circuit held that the Receiver had no authority to displace corporate decision-making of a company based in New Jersey.

In particular, the court held that a receiver appointed in South Carolina could not operate extraterritorially on his or her own, but instead must first seek approval from the courts of the company's home state in order to undertake any action against Whittaker, Clark & Daniels's assets outside of South Carolina. 3d Supp. App. 37, 2025 U.S. App. LEXIS 23439, at *17–18.[2]

Even "more fundamentally," the Third Circuit also held that a court in South Carolina could never give the Receiver the authority he claimed to have because to do so would breach limitations embodied by the U.S. Constitution's system of federalism. One state can have no interest in regulating beyond its own borders, and to do otherwise would violate, at least, the Due Process

---

[1] Notably, the Bankruptcy Court for the Southern District of New York has recognized the Canadian proceedings and, to date, has granted relief in the United States consistent with the protections afforded by the Canadian court. Docket Entries 8 and 37, *In re Asbestos Corp. Ltd.*, Case No. 25-10934 (MG) (Bankr. S.D.N.Y.).

[2] As the Court is aware, English courts—the forum for CIHL—have already rejected any suggestion that they will recognize this receivership. *CIHL v. Protopapas* [2024] EWHC 2999.

Clause and the Dormant Commerce Clause. *Id.* at *18–20. "Thus," the Third Circuit held, "when it comes to control over corporate decision-making, a state 'has no interest in regulating the internal affairs of foreign corporations.'" *Id.* at *20 (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46 (1982)). The court concluded its analysis by explaining that if the South Carolina court's order reached as far as the Receiver claimed, "it would be an unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state, and a radical intrusion into the province of a co-equal sovereign." *Id.*

Like the Canadian court's order in *ACL*, the Third Circuit's decision in *Whittaker, Clark & Daniels* reinforces *Welch*'s holding that the Receiver must stay out of a company's "boardroom" decisions and "business activities."[3]

III. *Altrad Investment Authority SAS v. Protopapas* [2025] EWHC 2470 (Ch).

In April 2025, the directors of CIHL and Cape plc, on the one hand, and the directors of several other entities (including Altrad Investment Authority and Mr. Altrad, who are the Altrad Defendants here), on the other, entered into a mutual release. Under the terms of the release, each party agreed to release any potential claim that it may have against the other arising out of alleged asbestos-related personal injury claims, including specifically any successor-in-interest, alter ego, or single business enterprise theories of liability. In other words, the rightful decision-makers for the companies on whose behalf the "Third-Party Complaint" is allegedly asserted have released all claims against the Altrad Defendants presented by the "Third-Party Complaint." (3d Supp. App. 98.)

[3] For awareness, the Receiver's conduct with respect to bankruptcy proceedings has brought national media attention to this situation. *E.g.*, Akiko Matsuda, "Asbestos Bankruptcies Test Reach of Frequent South Carolina Receiver," *Wall Street Journal* (Sept. 22, 2025). (3d Supp. App. 108.)

Mr. Protopapas refused to accept the claims had been released, and the Altrad Defendants and others therefore brought proceedings in the High Court of Justice in the Business and Property Courts of England and Wales seeking a declaration as to the validity of the mutual release. On September 30, 2025, after a multiday hearing and notice to all parties, the English court issued a ruling that affirmed the validity and enforceability of the release. That judgment and order are included on Pages 59 through 97 in the attached Third Supplemental Appendix.

When handing down the decision, the judge in that case requested that the Altrad Defendants file with the South Carolina courts directly a bundle of materials setting out the consideration that these matters have received from the English courts so as to explain why the English Court made the orders that it has. Conscious of the request made by the High Court, the Altrad Defendants, with the assistance of their English lawyers, are preparing materials urgently that they will file with this Court and the circuit court to explain that ruling.

At its core, the English court's ruling recognizes that the Receiver's "Third-Party Complaint" runs immediately afoul of settled English jurisprudence in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA).[4] Moreover, *Adams* settled expectations for so many in the United Kingdom for the last several decades. (*See* 3d Supp. App. 69–70, Judgment. ¶¶ 33–34 (describing Altrad's arm's-length acquisition of CIHL that was in reliance on the enforceability of *Adams* and the claims system based on *Adams*); *id.* ¶¶ 44–49 (describing the "comprehensiveness" of the litigants' arguments and the courts' analysis in *Adams*); *id.* ¶¶ 50–53 (describing the court-approved claims system that is based on *Adams*).)

[4] The Altrad Defendants provided a complete copy of *Adams*—the trial court's order, the appellate court's order, and the appendix accompanying the appellate court's order—to this Court on Pages 104 through 483 of their Supplemental Appendix, filed on November 24, 2024. They provided a complete copy of Justice Mann's prior judgment and order on Pages 1 through 85 of that same Supplemental Appendix.

While this ruling will be described in greater detail in a subsequent submission, the Court should be aware that the Receiver's conduct here would not only override the "boardroom" decisions of Cape plc and CIHL, but would also disrupt a court-ordered claims system that has been operating for years. Thus, the English court issued its decision to enforce the mutual release executed by the directors of CIHL and Cape plc, on the one hand, and the Altrad Defendants and others, on the other hand. (3d Supp. App. 98 (Mutual Release).)

The English court's reasoning is consistent with *Welch*'s holding that a receiver cannot interfere with "boardroom" decisions. To the extent the claims presented in the Receiver's "Third-Party Complaint" have any merit (they have none—*Adams* thoroughly rejected them decades ago), the directors of the companies who are implicated by the receivership decided to release them. And, as explained by the Third Circuit, the validity of that decision is rightly addressed by the courts where the companies that held those claims are located: England. *Whittaker, Clark & Daniels*, 2025 U.S. App. LEXIS 23439, at *17–18. The English court's declaration of the validity of the mutual release provides an independent reason why this Court should terminate this litigation and, concurrently, deny the sanctions motion.

PROCEEDINGS ON REMAND FOLLOWING *WELCH* AND *TIBBS*

In addition to new legal authorities, further developments before the circuit court provide additional independent reasons why the Court should deny sanctions and dismiss this litigation.

This Court forcefully affirmed each point articulated above in *Welch* and *Tibbs* before remanding this case. It also gave the circuit court specific instructions on remand: (1) ensure every receivership appointment in the Asbestos Docket complies with South Carolina law, including *Welch*, and restricts a receiver's "scope of authority" to working only in the case in which he or she is appointed, *Tibbs* ¶ (A); (2) "rule on all pending motions or set forth an explanation of the

reasons the court determines it should not rule at this time," *id.* ¶ (B); and (3) provide monthly reports to this Court regarding the status of all Asbestos Docket receiverships, "including the current status of *Park*," *id.* ¶ (C).

The circuit court has now provided three such updates.[5] However, those reports appear to have overlooked material information, including information that this Court specifically requested about *Park*. The omitted information, detailed below, reveals the absence of jurisdiction for every step of this receivership proceeding.[6]

I. The "current status of *Park*" is that the case is a legal nullity and has been for more than three years.

The starting point for the receivership in dispute here is *Park*, and the Court's remand order specifically instructed the circuit court to disclose "the current status of *Park*." *Tibbs* ¶ (C). In its monthly submissions, the circuit court has reported that *Park* is still an "open" case on the Asbestos Docket because it is coded that way on the online Public Index, that "Cape" is the only defendant remaining in *Park*, and that Ms. Park's estate was closed by the Spartanburg County Probate Court "due to a miscommunication" but has since been reopened. (First Report at 4 (July 23, 2025); Second Report at 2–3 (Aug. 25, 2025).)

---

[5] The Altrad Defendants learned about the third report when they stumbled upon it in this Court's C-Track system. Despite that report indicating that it was both filed in *Tibbs* and distributed to counsel, it was neither.

[6] The Altrad Defendants (in *Tibbs*), the Charter Defendants (in *Tibbs*), and Lloyd's of London and other insurers (in *Park*) brought the information contained herein to the circuit court's attention and repeatedly implored the circuit court to include it in the monthly reports to this Court. (*E.g.*, Response to the Court's First Report Regarding the Current Status of *Park* (filed in *Park* and *Tibbs*, July 29, 2025) (3d Supp. App. 111–19).) The putative Receiver, however, objected and told the circuit court that it should not disclose this information to the Supreme Court. (*See* Receivers' Response at 2 (filed in *Tibbs*, Aug. 4, 2025) ("The Submission should not be forwarded to the Supreme Court.").) The circuit court complied with the Receiver's request to keep this information from the Court.

Respectfully, the whole of the public record that has been discovered following remand reveals a significantly different story than that which has been reported.[7]

The complete story of *Park* is that the *Park* tort case concluded more than three years ago—Mr. Park said so, and so did his lawyers—and jurisdiction has never existed for ***any*** of the receivership activity. Consider:

- The *Park* tort case was mediated on May 24, 2021. Just days before mediation, Mr. Park's siblings and co-beneficiaries released any claim they may have had to any additional proceeds from the estate and any claims they may have against Mr. Park as the personal representative of the estate. (3d Supp. App. 182–83 (releases signed by co-beneficiaries on May 21 and 22, 2021); 3d Supp. App. 198; Notice of Mediation (May 24, 2021).)

- Just days after mediation, Mr. Park's counsel reported to the circuit court that mediation had been successful: "By way of update, the *Park* and *Garren* cases have ***both fully resolved***. The remaining Defendants in *Wannamaker* and *Wilson* are listed below." (3d Supp. App. 203 (email from Counsel (June 3, 2022)) (emphasis added).)

- The very next business day—June 6, 2022—Mr. Park filed a sworn and notarized statement with the Probate Court attesting that he had completed everything necessary to close Ms. Park's estate, and he requested that the Probate Court close the estate and terminate his appointment as personal representative. (3d Supp. App. 185.)

- *Park* had been set for trial on June 20, 2022. (Docketing Order (filed Dec. 1, 2021 in *Park*).) In light of counsel's June 3rd email stating that the case was "fully resolved," the June 20th trial date came and went without another word about the *Park* tort case.

- On August 26, 2022, the Probate Court granted Mr. Park's motion, closed the estate, and terminated his appointment as personal representative. (3d Supp. App. 186–88.) Accordingly, as of that date, the plaintiff in *Park* ***no longer existed as a legal entity***.

[7] Everything discussed herein is taken straight from the public record. To supply the Court with the entirety of the record from both *Park* and *Tibbs* would likely overwhelm the Clerk's office. Therefore, the Altrad Defendants are (1) reciting the narrative that emerges from the Public Index in this motion; and (2) attaching the key documents that have emerged since remand. The Altrad Defendants respectfully request that the Court take judicial notice of the entirety of the filings in both cases. *See* Rule 201(b), SCRE (authorizing judicial notice of facts that are "not subject to reasonable dispute"); *id.* 201(f) ("Judicial notice may be taken at any stage of the proceeding."). Of course, if the Court wishes for additional materials from the circuit court's record of *Park* and *Tibbs*, the Altrad Defendants are pleased to compile it.

This timeline is critical because the "Cape" receivership at issue did not come into existence until Mr. Park's counsel filed a motion on March 6, 2023, in the *Park* tort case, which the circuit court granted 11 days later without a hearing. That motion and appointment order raise several jurisdictional concerns that have been overlooked in the Reports to this Court, including:

- The receivership motion was filed and the order was entered ***nine months after*** counsel reported that the case was "fully resolved."

- The receivership motion was filed and the order was entered ***eight and a half months after*** the *Park* tort case's trial date passed.

- The receivership motion was filed and the order was entered ***six and a half months after*** the Park estate was closed and Mr. Park's appointment as personal representative terminated. In other words, there was ***no plaintiff to even make such a request***.

- At the time of both the motion and the order, there was ***no proof*** that either Cape plc or CIHL had been served with a summons and complaint in the *Park* tort case. And still today, there is still no such proof anywhere in the record.

- At the time of both the motion and the order, there was ***no proof*** that either Cape plc or CIHL had been served with notice of the receivership motion. And still today, there is still no such proof anywhere in the record.

- At the time of both the motion and the order, there was ***no entry of default***, request for any entry of default, default judgment, or motion for default judgment against Cape plc or CIHL. And still today, there is no such default or judgment against either entity.

- There remains nothing in the record that could support any notion of a South Carolina court having general or specific personal jurisdiction over either Cape plc or CIHL, as neither has any connection at all to this state.

Each of these events is an independent disqualifier for appointing a receiver because each event violates Principles 1, 2, and 3 recited in the preceding section and reinforced by both *Welch* and *Tibbs*. But even more basic than the law of receiverships is this: at the time the receivership motion was filed and granted in *Park*, there was (1) no plaintiff, (2) no defendant, (3) no judgment, and (4) no claim pending—in short, nothing that could have given the circuit court jurisdiction to do anything at all.

This Court and others have been clear that these now-discovered points render everything that happened in *Park* after the estate was closed a "nullity" that is incurable as a matter of law. *See, e.g.*, *McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) (holding that once an estate is closed, it no longer exists as a legal entity, and a case lacking a legal entity as a party is a "nullity" due to the "fundamental" absence of jurisdiction); *Bailey v. Bailey*, 312 S.C. 454, 458–59, 441 S.E.2d 325, 327–28 (1994) (concluding that because "the respondents were without standing to intervene, the resulting restraining order [issued by the circuit court] is rendered void"); *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E.2d 155, 158 (1970) ("A complaint brought in the name of a plaintiff which is not a legal entity is a nullity and ***there is no foundation upon which to base an amendment***.") (emphasis added); *Bargil Assocs., LLC v. Crites*, 135 A.D.3d 676, 677–78 (N.Y. App. Div. 2016) ("Although the South Carolina probate court reappointed the defendant as the personal representative of the decedent's estate after the plaintiff made its present motion to dismiss the counterclaims and before the defendant submitted her opposition papers, such reappointment constituted a subsequent administration, ***which has no nunc pro tunc effect and does not relate back to the initial appointment***.") (applying South Carolina law, emphasis added); *see also* S.C. Code Ann. § 62-3-608 (providing that once a personal representative's appointment is terminated, he loses all "authority to represent the estate in any pending or future proceeding").

The *Park* receivership order—entered on March 17, 2023, in a case that had no parties, no claims, no judgments, or anything else required for jurisdiction to exist—set in motion the last two-plus years of litigation activity, including both this Court's remand order and the pending sanctions motion against the Altrad Defendants. The circuit court's lack of jurisdiction to enter that order is obvious and unavoidable, and it can and should be recognized by this Court through

its original jurisdiction authority, including through issuance of a writ of prohibition or a writ of injunction, to draw this litigation to a close without further expenditure of resources.

At a minimum, the Court should consider this new information from *Park* when assessing the motion for sanctions against the Altrad Defendants. The sanctions motion had no basis in the first place for all the reasons the Altrad Defendants have already submitted, but the motion can now be denied for an even more fundamental reason: it was made by a Receiver who has never existed as a juridical entity due to the *Park* appointment being void for lack of jurisdiction.

II. *Tibbs* is likewise a legal nullity and has been from the outset.

Not only does the post-remand activity reveal the *Park* receivership proceedings to be a legal nullity, it reveals the absence of jurisdiction for the *Tibbs* proceedings as well for at least two reasons.

First, after remand, plaintiffs' counsel in *Tibbs* confirmed that they have never actually served Cape plc (or CIHL, which is not named as a defendant in *Tibbs*) with process in that case. Instead, they only "served the receiver as Cape in the *Tibbs* case." (Hr'g Tr. 156:23–24 (July 22, 2025) (statement of Ms. McVey).) But the Receiver had no authority to accept service of process on behalf of any "Cape" entity, as (a) his appointment from *Park* is void, and (b) he cannot be authorized to engage in such "boardroom" activity in any event.

A court has no jurisdiction over a foreign company that has no contacts with the state and that has never been served with process. *See, e.g.*, *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) (explaining that service is required in order to obtain personal jurisdiction over a defendant and that "[a] judgment is void if a court acts without personal jurisdiction").

Second, despite the Court's remand instructions in June, there has never been a receivership appointment in the *Tibbs* case. Those instructions were clear:

> We now direct the circuit court to ensure the receiver has been authorized to conduct work by an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.

Tibbs ¶ (A)(1). Despite that directive, the Receiver has never been authorized to conduct any work in *Tibbs*. Nor have the *Tibbs* plaintiffs moved for a receivership appointment, come forward with evidence and arguments that would satisfy *Welch* and the rest of South Carolina receivership jurisprudence, or agreed to undertake the cost-shifting risks associated with a wrongful appointment under South Carolina Code § 15-65-90.

Without such an order in place, the putative Receiver does not exist as a juridical entity in *Tibbs*, either, and everything that he has filed—including the sanctions motion with this Court—is void *ab initio*.

* * * * *

These post-remand points should be dispositive of this whole case in general, and of the putative Receiver's sanctions motion in particular. The Receiver does not exist as a matter of law in *Park* or in *Tibbs*. How, then, can he purport to bring third-party claims on behalf of an English company that has never been brought within the jurisdiction of a South Carolina court? And how can he purport to file a sanctions motion before South Carolina's highest court, again in the name of that English company, against the Altrad Defendants, who themselves are not subject to personal jurisdiction in South Carolina?

This procedural posturing violates Principles 1, 2, 3, and 4 of South Carolina receivership law (and there isn't a single receivership order in the Asbestos Docket setting a bond for any receivership, violating Principle 5). It ignores this Court's rulings in *Welch* and *Tibbs*. And it does not comport with any notion of Due Process or fundamental concepts of jurisdiction.

Because the sanctions motion has been filed by a Receiver who has never had any authority to act in this case or to seek assets on behalf of the *Tibbs* plaintiffs, whose initial appointment in *Park* is void, who is purporting to act on behalf of a company that is not subject to jurisdiction in South Carolina, and who is attempting to bring claims that have been released and extinguished against third-party defendants who are also not subject to jurisdiction in South Carolina, that motion should be denied as void.

CONCLUSION

The Altrad Defendants respectfully request that the Court supplement the record with the above-described information and materials, which have become available following the remand order; deny the Receiver's motion for sanctions; and dismiss all proceedings involving this putative receivership.[8]

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

Attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS

October 2, 2025

[8] As with their prior submissions, the Altrad Defendants file this motion without waiving any of their prior objections or arguments, including those related to personal jurisdiction.