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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,
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of which

Asbestos Corporation Limited is the.....	Appellant,
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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,
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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,
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of which

Mohed Altrad and Altrad Investment Authority SAS are the..... Appellants.

ALTRAD DEFENDANTS' RESPONSE TO THE SUPREME COURT'S MAY 8, 2025
CORRESPONDENCE

The Altrad Defendants have five pending petitions for a writ of certiorari arising out of the so-called “Cape” receivership and the *Tibbs* case. As discussed below, at least two of those appeals, as well as all trial-level activities, are directly impacted by the stay imposed by ACL’s bankruptcy proceedings: Appellate Case No. 2024-002114 (Mode of Trial), and Appellate Case No. 2025-000052 (Second Mode of Trial).

However, notwithstanding the ACL stay, other key, dispositive issues in the Altrad Defendants’ appeals remain ripe for urgent resolution to put an end to this unconstitutional, unlawful receivership scheme and its related abuses. Resolution of these dispositive issues in Appellate Case No. 2024-001499 would not only efficiently terminate the purported “Cape” receivership, but it would also create clear guardrails for what a South Carolina receiver can and cannot do in asbestos litigation, consistent with the limits of state-court receivers under South Carolina law, the United States Constitution, respect for the internal affairs of solvent business, principles of comity, and principles against extraterritorial assertions of power by state court receivers.

BACKGROUND OF ACL’S BANKRUPTCY PROCEEDINGS

Chapter 15 of Title 11 of the United States Code—the Bankruptcy Code—was enacted in 2005 to adopt with certain modifications the UNCITRAL Model Law on Cross Border Insolvency (the “Model Law”).¹ Both Chapter 15 and the Model Law are premised upon the principle of

¹ The Model Law has been enacted by more than 50 countries. The last two digits of the cited U.S. Bankruptcy Code sections correspond to the similarly numbered Articles of the Model Law.

international comity.² Chapter 15’s purposes include promoting cooperation between U.S. and foreign courts and the fair and efficient administration of cross-border cases to protect the interests of all stakeholders.³ In applying Chapter 15, U.S. courts are directed to “consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.”⁴

A Chapter 15 case is commenced by the filing of a petition for recognition of a foreign bankruptcy case.⁵ Upon recognition of the foreign bankruptcy case as a foreign main proceeding, the automatic stay under Bankruptcy Code Section 362(a) applies to protect “the debtor and the property of the debtor that is within the territorial jurisdiction of the United States.”⁶ From the time of filing the Chapter 15 petition for recognition and granting such recognition, a bankruptcy court may, in its discretion, grant provisional injunctive relief that is coextensive with the automatic stay under Bankruptcy Code Section 362(a).⁷

² The U.S. Supreme Court has described international comity as “the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).

³ 11 U.S.C. § 1501(a) (The purpose of Chapter 15 is to “incorporate the [Model Law] so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of,” among other things, cooperation between U.S. and foreign courts, greater legal certainty for trade and investment, fair and efficient administration of cross-border cases to protect the interests of all stakeholders, protection and maximization of the value of a debtor’s assets, and the rehabilitation of financially troubled businesses”).

⁴ *Id.* § 1508.

⁵ *Id.* § 1504.

⁶ *Id.* § 1520(a)(1). In addition, upon recognition of a foreign nonmain proceeding, a bankruptcy court may in its discretion apply the automatic stay under Bankruptcy Code Section 362(a) to protect the debtor and its property within the territorial jurisdiction of the United States. *Id.* § 1521(a).

⁷ *See id.* § 1519(a).

Asbestos Corporation Limited (“ACL”) commenced a Chapter 15 case in the United States Bankruptcy Court for the Southern District of New York for recognition of a proceeding under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the “CCAA Proceeding”) currently pending before the Québec Superior Court of Justice (Commercial List).⁸ The U.S. Bankruptcy Court has scheduled a hearing on recognition of the CCAA Proceeding, which has been rescheduled for June 30, 2025 (the “Recognition Hearing”).⁹ Further, ACL has requested provisional relief to impose the automatic stay pending the Recognition Hearing.¹⁰ Despite being given a chance to oppose this request, the Receiver told the U.S. Bankruptcy Court that he “takes no position” regarding ACL’s requested relief.¹¹ A hearing on this request for provisional relief is scheduled for May 19, 2025 (the “Provisional Relief Hearing”).

Pending the Provisional Relief Hearing, the U.S. Bankruptcy Court has entered a Temporary Restraining Order—already provided to this Court—applying Bankruptcy Code Section 362 “to stay and restrain all persons and entities” from, among other things, “commencing or continuing any suit, action, or proceeding against” ACL.¹² The TRO was effective immediately

⁸ Dkt. Nos. 1, 4 in *In re: Asbestos Corp. Ltd.*, Case No. 1:25-bk-10934-mg (Bankr. S.D.N.Y.) (“U.S. Bankruptcy Proceedings”).

⁹ Dkt. No. 32, at 4 in U.S. Bankruptcy Proceedings.

¹⁰ Dkt. No. 5 in U.S. Bankruptcy Proceedings.

¹¹ Dkt. No. 23, at 36 in U.S. Bankruptcy Proceedings.

¹² Dkt. No. 8 in U.S. Bankruptcy Proceedings, TRO, ¶ 1. The provisional relief granted by the TRO is essentially coextensive with the traditional automatic stay under Bankruptcy Code Section 362 and, in addition to ACL, applies to protect certain “Stay Parties,” which include ACL’s officers and directors, CLMI, and a third-party claims administrator and to protect ACL’s “U.S. Interests,” which include its (i) property and the proceeds thereof, if any, located within the territorial jurisdiction of the United States, as further defined in 11 U.S.C. § 1502(8); and (ii) rights, obligations and responsibilities in the United States. *Id.*; see also *id.* ¶ 4.

and enforceable upon its entry on May 6, 2025.¹³ By its terms, the TRO remains in effect and continues “for so long as the stay imposed in the CCA Proceeding remains in effect” unless cause is shown to the contrary at the Provisional Relief Hearing,¹⁴ written consent is provided by ACL, or leave is granted by the U.S. Bankruptcy Court.¹⁵

By its plain language, the U.S. Bankruptcy Court’s TRO applies to the automatic stay to protect ACL from the commencement or continuation of proceedings against it. The *Tibbs* case and appeals from it are proceedings “against” ACL because ACL is a defendant in the underlying *Tibbs* case and has opposed the Receiver’s overreach. Accordingly, the South Carolina proceeding is stayed, just as ACL recently explained in its own response to the Court’s May 8, 2025 correspondence.¹⁶ This stay applies to ACL and all litigation involving it, including the underlying *Tibbs* case.¹⁷ It will remain in effect unless and until the U.S. Bankruptcy Court either declines to convert the TRO into an order of provisional relief at the Provisional Relief Hearing or grant recognition at the Recognition Hearing or grants leave from its protections.

Accordingly, the scope of the stay of proceedings involving ACL may be altered following the June 30th hearing. Respectfully, it is important for the Court to be aware of that possibility as it considers the applicability of the current TRO.

¹³ TRO, ¶ 8.

¹⁴ TRO, ¶ 9.

¹⁵ TRO, ¶ 4

¹⁶ See TRO, ¶¶ 1(i) and 4. For avoidance of doubt, this stay is subject to certain exceptions that are not relevant here. See *id.* ¶ 4(i)-(iii).

¹⁷ See TRO, ¶ 1 (the stay applies to “all persons and entities”).

ALTRAD DEFENDANTS' PENDING APPEALS

The Altrad Defendants presently have five petitions pending before this Court that all derive from a single source: The purported Receiver for “Cape” (like ACL, a first-party defendant in *Tibbs*) wrongly believes he has the power to reach beyond South Carolina’s borders to divest the boards of foreign corporations of their power to govern, but the United States Constitution and South Carolina law specifically forbid what is happening below.¹⁸

This issue isn’t limited to the Altrad Defendants’ case, either, as the Receiver has attempted to interfere with businesses in at least New Jersey (Whittaker Clark & Daniels), Texas (Payne & Keller), Canada (ACL and Atlas Turner, as this Court is aware), England (Cape Intermediate Holdings Limited), and the Bailiwick of Jersey (Cape PLC), among numerous others. And the Receiver not only tries to interfere with the businesses themselves, he also sues their lawyers when those companies take steps to protect themselves from his overreach.¹⁹ The independent court-appointed Monitor for ACL even highlighted this practice of the Receiver in submissions to both the Canadian and American bankruptcy courts:

Moreover, the South Carolina Receiver has repeatedly taken legal action against counsel in cases involving other asbestos defendants for which he has been appointed receiver, seeking sanctions, damages, and other legal relief against counsel personally.

¹⁸ See generally *Pollock v. Carolina Interstate B&L Ass’n*, 48 S.C. 65, 25 S.E. 977, 980 (1896) (“The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.”)

¹⁹ Examples of cases in which the Receiver has sued or threatened to sue lawyers and law firms include: 2017-CP-42-04429 (Gallivan, White & Boyd); 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); 2023-CP-40-03540 (Goldfein & Joseph); and 2024-CP-40-05397 (Winston & Strawn and several individual lawyers). The Court should rebuke such attacks on the Rule of Law and misuses of the Judiciary to coerce companies to yield to the Receiver’s wishes.

Specifically, the South Carolina Receiver has retaliated against opposing counsel and law firms for (i) claims of alleged legal malpractice, (ii) declarations that the Receiver is entitled to counsel's and client files, (iii) claims of alleged spoliation of evidence with respect to representations of clients dating back decades, (iv) declarations that counsel and law firms must "account" for all fees received from clients, and (v) sanctions.²⁰

The Receiver's behavior is a far cry from the far more modest and circumscribed position his counsel took at oral argument before this Court in the ACL appeal, where he represented to the Court that the Receiver's authority was limited only to trying to seize a foreign company's insurance policies (even though as a matter of South Carolina law, insurance policies issued by and to out-of-state entities are not considered property that can be seized in this state). While that was the Receiver's position at oral argument to this Court in ACL, his behavior in other cases demonstrates that he has a far more ambitious view of his powers and their ability to extend nationwide and even internationally.

This overreach by the Receiver beyond any semblance of the limits of state-court receivers under the U.S. Constitution and South Carolina law has now been rebuked by several courts outside of South Carolina—first by federal courts in New Jersey (WCD);²¹ then by international

²⁰ First Report by Raymond Chabot Inc. in its Capacity as Monitor ¶¶ 2.26–2.27 (Dkt. No. 32-3 in U.S. Bankruptcy Proceedings).

²¹ *Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *16–17 (D.N.J. May 31, 2024) (“The enacting statute in question limits the power of a receiver over a foreign corporation to ‘the property within this state.’ S.C. Code Ann. § 15-65-10(4). This is intuitive—traditionally, a state court’s power is limited to its territorial boundaries.”), *further appeal pending at* Case No. 24-2210 (3d Cir.).

courts in England and Wales and France (CIHL and, derivatively, Cape PLC);²² and now by a federal court in New York (ACL).²³

Respectfully, the Court should not let this untenable, unlawful situation fester any longer. The Altrad Defendants’ Appellate Case Nos. 2024-002114 (Mode of Trial) and 2025-000052 (Second Mode of Trial) are both directly implicated by the TRO, as they involve the right to jury trials before the circuit court in proceedings also involving ACL. As the Court is aware, the Receiver’s “claims” against the Altrad Defendants are supposedly derivative claims, as he pled them via a third-party complaint, and Rule 14 only permits third-party practice for derivative claims. But without direct liability first attaching to Cape PLC from the *Tibbs* case, there can be no “derivative” third-party claim. There can be no such first-party liability, though, without a jury trial that involves both Cape PLC (over which the circuit court has no jurisdiction) and ACL (against which litigation is now suspended due to the TRO).

This procedural requirement—that ACL, Cape PLC, and all other first-party defendants must be included at trial—is a function of the South Carolina Contribution Among Tortfeasors Act. As a matter of South Carolina law, when tort claims are asserted against multiple defendants, a jury (when, as here, one is demanded) must apportion fault among the litigants, or it can assign the entirety of liability to a third party. S.C. Code Ann. §§ 15-38-15(C), (D). If a defendant’s fault

²² *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (Supp. App. 1); Ex. A, *Cape PLC v. Protopapas*, Case DBYB-W-B7J-PM3N, at 7 (Montpellier Court of Appeal Apr. 8, 2025) (“Pronounces the exequatur and declares enforceable in France the order of the High Court of Justice of England and Wales dated November 22, 2024 against Mr. Peter Protopapas” after independently affirming that the High Court had jurisdiction to render its decision, that the High Court’s decision does not violate international public policy, and that there was no fraud involved in the proceedings before the High Court) (English translation).

²³ Because the ACL proceedings arose under Chapter 15, entry of the stay was discretionary with the U.S. Bankruptcy Court; after being informed through a petition for the TRO about the Receiver’s conduct, the U.S. Bankruptcy Court entered the TRO.

is determined to be less than 50%, then it is liable only for that percentage of damages. *Id.* § 15-38-15(A).

In other words, when multiple defendants are alleged to have contributed to a plaintiff's injury, as is the case in *Tibbs*, each defendant is entitled to have all other defendants at trial; otherwise, the jury cannot apportion fault as required by law. Because the TRO stays litigation against ACL, it necessarily stays any trial in the *Tibbs* case—which is the core issue in two of the Altrad Defendants' appeals before this Court. Those appeals should be stayed accordingly, along with all other proceedings below, because there's no possible way to have any "derivative" liability through third-party claims when the first-party case cannot lawfully proceed due to the ACL stay.²⁴

However, there are other dispositive issues at stake in the Altrad Defendants' appeals that are independent of ACL's TRO and that the Court can, and should, properly address without delay.

In Appellate Case No. 2024-001499, the Altrad Defendants challenge the roots of the problem: the circuit court's unlawful appointment of a Receiver, and the circuit court's unlawful attempt to exercise personal jurisdiction over the Altrad Defendants. The Court has already recognized this as the nub of the dispute. "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 [in the ACL appeal]." Order (Jan. 16, 2025) (emphasis added).

²⁴ Similarly, all proceedings in the "third-party" case should have been enjoined over a year ago due to the circuit court's lack of jurisdiction to proceed with anything while appeals involving the impropriety of the Receiver's appointment are pending. Rule 205, SCACR. The absence of jurisdiction is an independent reason why the proceedings below should not proceed, and it is the focus of Appellate Case No. 2024-000916. Moreover, that the circuit court held the Altrad Defendants in contempt and struck a portion of their pleadings without any jurisdiction to do so is the focus of Appellate Case No. 2024-002116, and it goes hand-in-glove with the Altrad Defendants' Rule 205 Injunction appeal.

Although the resolution of that issue is now stayed as it relates to ACL, the Court continues to have the ability to review and vacate the circuit court's order finding that the "Cape" receivership was properly created, modified, and continued.²⁵ Simply put, the circuit court never had personal jurisdiction over Cape PLC (in Jersey), or over CIHL (in England), or over Altrad UK (in England), or over Mr. Altrad or Altrad Investment Authority (in France). And without jurisdiction over any of them, it certainly could not appoint a receiver over Cape PLC or CIHL, nor could it authorize a South Carolina lawyer to try and seize the foreign (non-insurance) assets or property of either of these foreign companies; it could not authorize a South Carolina lawyer to bring claims in the name of either of these foreign companies; it could not authorize a South Carolina lawyer to claim to accept service for either of these foreign companies; it could not authorize a South Carolina lawyer to try and issue subpoenas in the names of either of these foreign companies; it could not authorize a South Carolina lawyer to seek to de-privilege Cape PLC or CIHL's records; and it could not authorize a South Carolina lawyer to appear as counsel for either of these foreign companies.

But the circuit court has allowed the Receiver to do (or at least try to do) all of these things. That is unquestionably unconstitutional. For one, the Commerce Clause, among others, prohibits one state from trying to reach beyond its own borders to impact commerce happening in another state or nation. Likewise, the Due Process Clause forbids a court from exercising jurisdiction over

²⁵ In his filing before the U.S. Bankruptcy Court, the Receiver has given himself the title "The Court-Appointed Receiver for the Insurance Assets of Asbestos Corporation." (Dkt. No. 23 in U.S. Bankruptcy Proceedings.) And he conceded before this Court in response to questioning from Justice Few that the outer boundary of the receivership could only possibly reach ACL's insurance policies. (Dkt. No. 23-43 in U.S. Bankruptcy Proceedings, at Oral Argument Tr. 90:5–91:9.) This is wrong as a matter of long-settled law, as such policies are not "property" within South Carolina. *Howard v. Allen*, 254 S.C. 455, 460–61, 176 S.E.2d 127, 129 (1970). But, critically, the appointment orders here in no way contain such an "insurance only" limitation, heightening the urgency of this Court's dissolution of the Cape PLC and CIHL receiverships.

an entity that has done nothing to purposefully avail itself of that forum—and nothing in the record or reality suggests the Altrad Defendants (or Cape PLC, or CIHL) have ever done anything at all to engage with South Carolina.

These “receiverships” are also contrary to South Carolina law. South Carolina Code § 15-65-10(4) only allows a receivership to involve a foreign company when that foreign company is a judgment debtor, and a receivership can only attach to a foreign company’s assets that are located within South Carolina. Here, there are no such debts, and there are no such assets.²⁶

The absence of any in-state connection is true even on the Receiver’s previously-rejected theory that insurance policies covering in-state obligations are in-state assets, as the “Cape” receivership has nothing to do with insurance and is instead an attempt by the Receiver to create liabilities for “Cape” by contending that “Cape” was in a fraudulent liability-avoidance scheme with its alleged alter egos, including the Altrad Defendants and numerous others.²⁷ This litigation,

²⁶ Realizing this is the case, the circuit court abandoned this basis for appointing the Receiver over Cape PLC when it entered in Tibbs its *nunc pro tunc* modification of the receivership in Park to now be over CIHL—an unlawful modification that is squarely before the Court in Appellate Case No. 2024-001499.

What’s more, when Cape PLC and CIHL brought this situation to the attention of the English court, the circuit court entered yet another order in Park that purports to approve of the Receiver’s misconduct in Tibbs. Stunningly, the Receiver notified the U.S. Bankruptcy Court of this latter order, but he stated to the U.S. Bankruptcy Court that it was entered in Tibbs, which is not true (because, if it had been entered in *Tibbs*, the Receiver knows that it would have been immediately appealable as a matter of right by the Altrad Defendants and others). (Dkt. No. 23, at 35 n.122 in U.S. Bankruptcy Proceedings.) Worse yet, despite trumpeting that order’s content, the Receiver failed to notify the U.S. Bankruptcy Court that the Locke Lord law firm timely filed a Rule 59 motion that challenged the lawfulness of that “clarification” order and exposed the procedural irregularities underlying it—a motion that has been unopposed, yet unruled upon, for over six months and counting. (Locke Lord’s Rule 59 Motion (Nov. 15, 2024), in *Park v. Armstrong Int’l*, Case No. 2021-CP-40-02727.)

²⁷ As this Court is aware, the Receiver’s exact narrative was fully considered and rejected after a 34-day long trial and 17-day long appellate process in 1990. *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA). (Supp. App. 104–483.)

in other words, has nothing to do with a state-court receiver seeking to marshal and collect in-state assets or insurance policies the Receiver contends cover in-state obligations.

Courts elsewhere recognize the impropriety of the Receiver's attempts to reach across borders and have rejected those attempts. Consider the Chapter 11 bankruptcy filed by WCD in New Jersey, where it is located. Following a verdict in the Asbestos Docket against WCD, Judge Toal appointed the Receiver under Section 15-65-10(4) "pursuant to the South Carolina Law" and conferred the "power and authority [to] fully administer all assets of WCD, accept service on behalf of WCD, engage counsel on behalf of WCD and take any and all steps necessary to protect the interests of WCD whatever they may be." The Receiver interpreted that appointment to mean he controlled the interests of WCD no matter the issue or the venue and that, as the Receiver, he had sole authority to put the corporation into bankruptcy if he, and he alone, wanted to. The Receiver also argued that the appointment order divested the WCD Board of Directors of its power.

Claiming that he alone controlled WCD, the Receiver moved for the Bankruptcy Court to dismiss the WCD bankruptcy. The Bankruptcy Court in New Jersey disagreed and denied a motion to dismiss filed by the Receiver. The District Court affirmed that dismissal.²⁸

The District Court's opinion surveyed South Carolina law and confirmed the basic point that a receiver can have no extraterritorial reach, stating: "The enacting statute in question limits the power of a receiver over a foreign corporation to 'the property within this state.'" (citing S.C.

²⁸ See *In re Whittaker, Clark & Daniels, Inc.*, Case No. 23-13575 (MBK), 2023 Bankr. LEXIS 1600, at *14–25 (Bankr. D.N.J. June 20, 2023) (rejecting the receiver's arguments that the South Carolina circuit court authorized him to block a New Jersey company's board of directors from making a bankruptcy filing), *ruling affirmed and Receiver's appeal dismissed by Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270 (D.N.J. May 31, 2024), *further appeal pending at* Case No. 24-2210 (3d Cir.).

Code Ann. §15-65-10(4)).²⁹ It also commented on the limitations of the Receiver in an extensive footnote, explaining in part:

South Carolina precedent more broadly also pulls against [the Receiver’s] contention that the Receivership Order would automatically reach beyond its borders and into the governance of a foreign corporation without any specific language indicating as much. In *Clark v. Preferred Accident Insurance Company of New York*, the South Carolina Supreme Court wrote that “[e]very State has jurisdiction to determine for itself the liability of property within its territorial limits, to seize and sell such under the process of its Courts.” 231 S.C. 167, 175 (1957).³⁰

The courts in New Jersey are not alone in their rebuke of the Receiver’s overreach. As this Court is aware, Justice Mann of the High Court of Justice, Business and Property Courts of England and Wales ordered on November 22, 2024, that the Receivership Order appointing Protopapas as a receiver over a UK entity is not recognized and has no legal effect in England and Wales and worldwide. The Order further held that the Receiver has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and that the rights and duties of CIHL remain unaffected by the appointment of Protopapas as receiver in South Carolina. Such was the High Court’s astonishment at the receivership and his unlawful actions that it took the extraordinary step of enjoining him purporting to act on behalf of CIHL worldwide.³¹

More recently, on April 8, 2025, a French court affirmed the High Court’s Judgment and held that the Receiver had no power authority to act for Cape, the U.K. entity, recognizing that his purported appointment was invalid under French law, too.³²

²⁹ 2024 U.S. Dist. LEXIS 97270, at *16.

³⁰ *Id.* at *18 n.8.

³¹ (Supp. App. 1–85.)

³² French and English translations are attached at Exhibit A. Additional international scrutiny over the Receiver’s misconduct further underscores that there are “special and important reasons” for the Court to grant the Altrad Defendants’ certiorari petitions. Rule 242(b), SCACR.

ACL's recent bankruptcy filing in Canada, and the related Chapter 15 action in New York, make the same argument—that the Receiver has over-extended the boundaries of his putative authority and is attempting to operate outside the bounds of the South Carolina receivership statute. The consequences of the Receiver acting outside the bounds of his authority are captured by ACL's Initial Application. The Application rightly observed in paragraph 76: "It is highly worrisome and problematic that the South Carolina Receiver was appointed in respect of a Quebec-based company, with no activities or operations in the United States, let alone in South Carolina."

The upshot of this discussion is obvious: while the ACL TRO necessarily stays all trial-level proceedings in *Tibbs* and the Altrad Defendants' appeals before this Court that relate to trial-level procedural issues, the Court can and should vacate this unlawful receivership and put an end to this litigation by accepting certiorari review of issues that do not relate to trial procedures but that are dispositive of this whole situation through Appellate Case No. 2024-001499. The Receiver has never, not once, even attempted to argue that his appointment as a receiver for Cape PLC or CIHL is legitimate, or that his extraterritorial conduct is consistent with U.S. Constitutional, South Carolina, or international law. Indeed, it is not.

Accordingly, the Altrad Defendants respectfully urge the Court to confirm as much so that this matter can conclude and to give guidance on the appropriate reach and scope of receiver appointments in South Carolina asbestos litigation so that these appointments can be made consistent with the U.S. Constitution and South Carolina law.

Signature Page Attached

Respectfully submitted,

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May 19, 2025

Exhibit A to
Altrad Defendants' Response to the Court's
May 8, 2025 Correspondence

French and English Translations of
Cape PLC v. Protopapas, Case DBYB-W-
B7J-PM3N (Montpellier Court of Appeal
Apr. 8, 2025)

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N° RG 25/00122 - N° Portalis
DBYB-W-B7J-PM3N
Pôle Civil section 2

Date : 08 Avril 2025

LE TRIBUNAL JUDICIAIRE DE MONTPELLIER

CHAMBRE : Pôle Civil section 2

a rendu le jugement dont la teneur suit :

DEMANDEURS

Société Cape Plc Il s'agit d'une société de droit Jersiais, prise en la personne de son représentant légal domicilié es qualité audit siège, dont le siège social est sis 1st Floor Osprey House, 5-6 Old Street, St. Helier, JE2 3RG - JERSEY

Société Cape Intermediate Holdings Limited (CIHL) Il s'agit d'une société de droit anglais, prise en la personne de son représentant légal domicilié es qualité audit siège, dont le siège social est sis 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington, W - A4 4ST - ANGLETERRE

S.A.S. Altrad Investment Authority (AIA) Société immatriculée au RCS de Béziers sous le numéro 529 222 879, prise en la personne de son représentant légal domicilié es qualité audit siège, dont le siège social est sis 16 avenue de la Gardie - 34510 FLORENSAC

Monsieur Mohed Altrad dirigeant de sociétés,
né le 09 Mars 1948, domicilié 150 rue Le Pérugin - 34000 Montpellier

représenté par le cabinet Signature Litigation AARPI représenté par Maîtres ROUHETTE et Me BARDA, avocat plaçant au barreau de Paris et Maître Frédéric DABIENS de l'AARPI DABIENS, KALCZYNSKI, avocat postulant au barreau de MONTPELLIER

DEFENDEUR

Monsieur Peter D. Protopapas Avocat, de nationalité américaine.

Cet acte a été délivré à l'étranger le 30 décembre 2024, aux Etats Unis.,
domicilié : chez , 2110 N Beltline Boulevard, Columbia SC 29204 - 29204
Etats-Unis d'Amérique

non comparant

COMPOSITION DU TRIBUNAL lors des débats et du délibéré :

Président : **Florence LE GAL**

Juges : Cécilia FINA-ARSON
Magali ESTEVE

Lors des débats, conformément à l'article 805 du code de procédure civile, les parties ne s'y étant pas opposées, les débats ont eu lieu devant Madame Florence LE GAL et Madame Cécilia FINA-ARSON, juges rapporteurs, qui ont entendu les parties et en ont rendu compte lors du délibéré au troisième magistrat de la formation, Madame Magali ESTEVE, régulièrement empêchée.

Conformément à l'article 452 du Code de procédure civile, le jugement a été signé par devant Madame Florence LE GAL, ayant participé aux débats et au délibéré

assistés de Françoise CHAZAL greffier, lors des débats et de Linda LEFRANC-BENAMMAR greffier, lors du prononcé.

DEBATS : en audience publique du 11 Février 2025 au cours de laquelle le président a fait un rapport oral de l'affaire

MIS EN DELIBERE au 08 Avril 2025

JUGEMENT : signé par le président et le greffier et mis à disposition le 08 Avril 2025

RAPPEL DES FAITS ET DE LA PROCÉDURE

En 1893, la société "The Cape Asbestos Company Ltd" a été créée ; elle est aujourd'hui dénommée Cape Intermediate Holdings Limited -plus loin "CIHL"-, son siège social se situe à Appleton, Warrington en Angleterre, et la société "Cape Pic" en est la holding. Le Groupe Cape est un fournisseur de services et d'équipements industriels dans les secteurs de la pétrochimie et de l'énergie, mais il a également distribué des fibres d'amiante notamment par le biais d'une de ses filiales américaines, la North American Asbestos Corporation -NAAC-, dissoute en 1978.

En 1985, à Montpellier, le Groupe Altrad a été fondé par M. Mohed Altrad qui en est l'actionnaire majoritaire ; ce dernier exerce également les fonctions de président de la société Altrad Investment Authority -plus loin "AIA"-, société mère du Groupe Altrad immatriculée à Béziers depuis 2010. Le Groupe Altrad conçoit et développe des solutions dans les secteurs de la pétrochimie, de l'énergie, de la production d'électricité et de la construction ; en septembre 2017, il a fait l'acquisition du Groupe Cape.

En 2021 et 2023, des procédures américaines liées à un contentieux élevé par des victimes de l'amiante ont abouti à ce que la société AIA et M. Mohed Altrad soient attirés en qualité de "tiers défendeurs" par M. Peter Protopapas, avocat américain, en qualité d'administrateur judiciaire.

La société AIA et M. Mohed Altrad ont engagé différents recours pour la défense de leurs intérêts auprès de la juridiction américaine.

Et le 9 septembre 2024, les sociétés Cape Pic et CIHL ont de leur côté introduit une procédure accélérée devant la "High Court of Justice of England and Wales" -plus loin : la Haute cour de justice d'Angleterre et du Pays de Galles- aux fins qu'il soit ordonné à M. Peter Protopapas de notamment cesser d'agir ou prétendre agir en

qualité d'administrateur judiciaire de Cape Pic et de la société CIHL outre de s'arroger la qualité de représentant légal de la société CIHL.

La procédure anglaise a été régulièrement dénoncée à M. Peter Protopapas.

Le 22 novembre 2024, par sa décision combinée d'un jugement portant motivation de la juridiction anglaise et d'une ordonnance portant le dispositif qui en découle, la Haute cour de justice d'Angleterre et du Pays de Galles a fait droit aux demandes des requérants.

Ce même 22 novembre 2024, la décision de la Haute Cour de justice d'Angleterre et du Pays de Galles a été signifiée à M. Peter Protopapas.

Par ordonnance du 20 décembre 2024, au visa des articles 31, 122 et 509 du code de procédure civile, la société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad ont été autorisés à assigner M. Peter Protopapas à jour fixe à l'audience du 11 février 2025, en exequatur des jugement et ordonnance du 22 novembre 2024 rendus par la Haute cour de justice d'Angleterre et du Pays de Galles et ils ont sollicité du tribunal judiciaire de Montpellier, de juger recevable leur action ainsi que de prononcer l'exequatur à l'encontre de M. Peter Protopapas de la décision anglaise du 22 novembre 2024 par la High Court of Justice of England and Wales, dont le dispositif traduit par un traducteur assermenté est reproduit comme suit:

« IL EST DÉCLARÉ CE QUI SUIT:

1. L'ordonnance de mise sous administration judiciaire de la Court of Common Pleas (Cour des plaids communs) pour le cinquième circuit judiciaire de l'État de Caroline du Sud, comté de Richland (le Tribunal de Caroline du Sud) en date du 16 mars 2023, nommant M. Peter Protopapas ("M. Protopapas") en qualité d'administrateur judiciaire de CIHL ("l'Ordonnance de mise sous administration judiciaire"), n'est pas reconnue et n'a aucun effet juridique en Angleterre et au Pays de Galles et dans le monde entier.
2. M. Protopapas n'a et n'avait aucun pouvoir ou capacité pour agir au nom de CIHL en Angleterre et au Pays de Galles ou dans le monde entier et n'a aucun pouvoir ou capacité à l'égard de CIHL en Angleterre et au Pays de Galles ou dans le monde entier pour accomplir les actes visés aux paragraphes 6 à 10 ci-dessous.
3. Les droits et devoirs des administrateurs de CIHL ne sont pas affectés par la nomination de M. Protopapas en tant qu'administrateur judiciaire de CIHL en vertu de l'Ordonnance de mise sous administration judiciaire.
4. M. Protopapas n'a ni le pouvoir ni la capacité au nom de CIHL d'agir en tant qu'administrateur judiciaire de CIHL ou de l'engager devant le Tribunal de Caroline du Sud en ce qui concerne la Réclamation Park et la Réclamation Tibbs (telle que définie dans Oren 1) et n'a ni le pouvoir ni la capacité au nom de CIHL d'émettre ou de poursuivre des réclamations de tiers dans la Réclamation Tibbs contre l'une quelconque des tierces parties défenderesses dans cette procédure ("la Plainte 3P"), y compris (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (iii) Altrad Un, (iv) Cape UN Holdings Newco Un, (v) Cape Industrial Services Group Un, (vi) Cape Holdco Un, (vii) Altrad Services Un.
5. M. Protopapas n'a et n'avait ni le pouvoir ni la capacité d'accepter une signification au nom de CIHL dans la réclamation introduite devant le Tribunal de Caroline du Sud par une assignation en date du 11 novembre 2024 portant le numéro de demande C/A NO. 2024-CP-40-06639 ou toute autre procédure judiciaire engagée contre CIHL devant le Tribunal de Caroline du Sud ou dans le monde entier.

ET IL EST ORDONNÉ CE QUI SUIT:

6. M. Protopapas se voit interdire, en Angleterre et au Pays de Galles et dans le monde entier, d'agir ou de prétendre agir en qualité d'agent ou autre au nom de CIHL en vertu de l'Ordonnance de mise sous administration judiciaire.
7. M. Protopapas se voit interdire, en Angleterre et au Pays de Galles et dans le monde entier, de s'approprier, d'interférer avec ou d'usurper (de

- quelque manière que ce soit) l'exercice licite des droits et devoirs des administrateurs de CIHL.
8. M. Protopapas se voit interdire d'agir ou de prétendre agir au nom de CIHL dans la Réclamation Park et la Réclamation Tibbs (telles que définies dans Oren 1).
 9. M. Protopapas se voit interdire de continuer à poursuivre la Plainte 3P (telle que définie dans Oren 1).
 10. M. Protopapas se voit interdire de prétendre agir pour CIHL dans la réclamation introduite devant le Tribunal de Caroline du Sud par une assignation en date du 11 novembre 2024 portant le numéro de demande AIA NO. 2024-CP-40-06639 ou dans toute autre procédure judiciaire engagée contre CIHL devant le Tribunal de Caroline du Sud ou dans le monde entier.

Liberté de déposer une requête

11. Les Demanderesses seront libres de demander une réparation supplémentaire ou connexe.

Frais

12. Les frais des Demanderesses seront payés par le Défendeur sur une base standard, à titre d'évaluation détaillée en cas de désaccord.
13. Les Demanderesses auront la liberté de demander un acompte sur les frais.»

Aux termes de cette même assignation, les requérants ont sollicité du tribunal de rejeter tous moyens, fins et conclusions contraires de M. Protopapas et de le condamner à payer 50 000 euros en application des dispositions de l'article 700 du code de procédure civile outre les entiers dépens, dont distraction au profit de Maître Frédéric Dabiens, avocat au barreau de Montpellier, conformément aux dispositions de l'article 699 du code de procédure civile.

Aucun avocat ne s'est constitué pour M. Peter Protopapas, l'assignation ayant été délivrée à son adresse le 30 décembre 2024, selon les dispositions et formalités prévues par la Convention de la Haye du 15 novembre 1965, relatives à la signification et à la notification des actes judiciaires et extrajudiciaires dans les États membres.

En application des dispositions de l'article 455 du code de procédure civile, il est expressément renvoyé pour plus de précisions sur les faits, prétentions et arguments de la société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad à l'assignation valant leurs dernières conclusions régulièrement notifiées par bulletin au R.P.V.A.

L'ordonnance de clôture a été rendue le 11 février 2025 avec une audience de plaidoirie prévue à la même date du 11 février 2025, la décision ayant été mise en délibéré au 8 avril 2025.

MOTIFS DE LA DÉCISION

Selon l'article 472 du code de procédure civile, lorsque le défendeur ne comparaît pas, il est néanmoins statué sur le fond, le juge ne fait droit à la demande que s'il l'estime régulière, recevable et bien fondée.

Sur la demande d'exequatur

Selon l'article 509 du code civil, *les jugements rendus par les tribunaux étrangers et les actes reçus par les officiers étrangers sont exécutoires sur le territoire de la République de la manière et dans les cas prévus par la loi.*

La société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad sollicitent du tribunal le prononcé de l'exequatur de l'ordonnance, -son dispositif ayant été reproduit plus haut-, rendue le 22 novembre 2024 par la Haute cour de justice d'Angleterre et du Pays de Galles.

En-dehors de toute convention internationale applicable à l'exequatur des décisions prononcées par les juridictions étrangères, ce qui est le cas en l'espèce entre la République française et l'Angleterre, la juridiction française, saisie d'une demande d'exequatur doit s'assurer que trois conditions cumulatives sont remplies : la compétence indirecte du juge anglais ayant rendu la décision faisant l'objet de la demande d'exequatur, la conformité de cette dernière à l'ordre public international de fond et de procédure, puis l'absence de fraude à la loi.

● la compétence indirecte du juge étranger, fondée sur le rattachement du litige au juge

Il résulte des éléments du dossier qu'une procédure contentieuse américaine, en 2021, a opposé une victime de l'amiante, Mme Isabella Park, à la société Cape Pic et la société CIHL qui ont été attirées en qualité de défenderesses devant le tribunal de première instance du comté de Richland de Caroline du Sud au Etats-Unis : l'affaire a été enrôlée sous le numéro 2021-CP-40-02727 et instruite par la juge Mme Jean Hoefer Toal.

Le 16 mars 2023, une ordonnance a été prononcée ayant désigné M. Peter Protopapas, avocat spécialisé dans les dommages corporels, en qualité d'administrateur judiciaire de Cape PLC 3en tant qu'ayant droit de Cape Industries Lld, anciennement dénommée Cape Asbestos Company Lld.

Le 5 avril 2023, une seconde procédure américaine a donné lieu à un contentieux élevé cette fois à l'encontre de Cape Pic par les "époux Tibbs" : cette instance a été enrôlée sous le numéro 2023-CP-40-01759 et a été également instruite par la juge Mme Jean Hoefer Toal. Nonobstant l'absence d'ordonnance prononcée dans cette dernière affaire, et par conséquent l'absence de désignation d'administrateur judiciaire pour Cape Pic ou d'une autre société du Groupe Cape, M. Peter Protopapas est pourtant intervenu dans cette procédure en cette qualité d'administrateur judiciaire.

Le 12 juin 2023, aux termes d'un accord conclu entre les époux Tibbs et M. Peter Protopapas, les époux Tibbs se sont désistés de leur instance et action contre "Cape Pic" : le tribunal de première instance du comté de Richland de Caroline du Sud au Etats-Unis a été ainsi dessaisi de l'action principale dirigée contre la société Cape Pic.

Pourtant, le 30 juin 2023, la société AIA et M. Mohed Altrad ont été assignés en tant que "tiers-défendeurs" dans l'affaire Tibbs par M. Peter Protopapas, es qualité d'administrateur judiciaire de Cape Pic ; aux termes de l'assignation délivrée le 30 juin 2023 par ce dernier, il est réclaté que la société AIA et M. Mohed Altrad, en leur qualité de tiers-défendeurs, soient déclarés responsables de toutes les obligations des sociétés Cape Pic et de la société CIHL au titre d'un prétendu enrichissement injustifié et d'un concert frauduleux destiné à échapper à toute condamnation aux Etats-Unis en lien avec la distribution de fibres d'amiante par la société NACC dans les années 60 à 70 : la société AIA et M. Mohed Altrad ont exercé tout recours utile au soutien de leurs intérêts auprès de la juridiction américaine et une audience au fond était prévue sur la semaine du 3 au 7 février 2025.

Entre-temps, le 9 septembre 2024, les sociétés Cape Pic et CIHL, -sociétés de droit anglais-, ont de leur côté introduit une procédure accélérée devant la Haute cour de justice d'Angleterre et du Pays de Galles Pays de Galles aux fins qu'il soit ordonné à M. Peter Protopapas de notamment cesser d'agir ou prétendre agir en qualité d'administrateur judiciaire de Cape Pic et de CIHL outre de s'arroger la qualité de représentant légal de la société CIHL.

Le 22 novembre 2024 la Haute cour de justice d'Angleterre et du Pays de Galles a rendu une ordonnance dont l'essentiel du dispositif est rappelé plus haut, faisant droit aux demandes de la société Cape Pic et de la société CIHL.

La société Cape Pic et la société CIHL sont deux sociétés de droit anglais, respectivement enregistrées à Jersey, île britannique, pour la première, et pour la seconde à Appleton, Warrington en Angleterre.

Pour la défense de leurs intérêts dans le litige qui les oppose à M. Peter Protopapas, -désigné en Caroline du Sud aux Etats-Unis en qualité d'administrateur judiciaire, et ce au mépris du droit anglais et des règles de compétence applicables-elles se sont adressées au juge anglais au motif que leur principal établissement, leurs actifs et leurs organes de gouvernance sont localisés en Angleterre.

Le litige se rattache ainsi de manière caractérisée à l'Angleterre : il convient de constater la compétence indirecte du juge anglais.

● la conformité de cette ordonnance avec l'ordre international

L'ordonnance précitée ne comporte aucune violation de l'ordre public international français : elle est en conséquence en tous points conforme à l'ordre public international.

● l'absence de fraude

Au visa de l'absence de fraude à la loi, il convient de s'assurer que la juridiction anglaise n'a pas été saisie par la société Cape Pic et la société CIHL, alors que le litige ne relevait pas de celle-ci, en vue de contourner les règles applicables en France, en matière notamment de préjudice économique causé à ces sociétés. Force est de constater que dans le cas d'espèce, aucune fraude n'est caractérisée.

L'ensemble des conditions étant satisfaites, il est conféré l'exequatur de l'ordonnance de la Haute cour de justice d'Angleterre et du Pays de Galles en date du 22 novembre 2024, qui sera exécutoire en France.

Sur les demandes accessoires

Aux termes de l'article 696 du code de procédure civile, la partie perdante est condamnée aux dépens, à moins que le juge, par décision motivée, n'en mette la totalité ou une fraction à la charge de l'autre partie.

Il y a lieu de condamner M. Peter Protopapas succombant aux entiers dépens de l'instance, dont distraction au profit de Maître Frédéric Dabiens, avocat au barreau de Montpellier, conformément aux dispositions de l'article 699 du code de procédure civile.

Aux termes de l'article 700 du code de procédure civile, le juge condamne la partie tenue aux dépens ou qui perd son procès à payer :

1° A l'autre partie la somme qu'il détermine, au titre des frais exposés et non compris dans les dépens ;

2° Et, le cas échéant, à l'avocat du bénéficiaire de l'aide juridictionnelle partielle ou totale une somme au titre des honoraires et frais, non compris dans les dépens, que le bénéficiaire de l'aide aurait exposés s'il n'avait pas eu cette aide. Dans ce cas, il est procédé comme il est dit aux alinéas 3 et 4 de l'article 37 de la loi n° 91-647 du 10 juillet 1991 .

Dans tous les cas, le juge tient compte de l'équité ou de la situation économique de la partie condamnée. Il peut, même d'office, pour des raisons tirées des mêmes considérations, dire qu'il n'y a pas lieu à ces condamnations.

Les parties peuvent produire les justificatifs des sommes qu'elles demandent. La somme allouée au titre du 2° ne peut être inférieure à la part contributive de l'État majorée de 50 %.

En l'espèce, et au vu des éléments du dossier, M. Peter Protopapas n'ayant pas été présent lors de l'instance, il n'y a pas lieu à la condamner au paiement des frais irrépétibles.

Il est rappelé que l'exécution provisoire est de droit.

PAR CES MOTIFS

Le tribunal statuant publiquement, par défaut, en premier ressort, par mise à disposition du jugement au greffe, les parties ayant été préalablement avisées dans les conditions prévues au deuxième alinéa de l'article 450 du code de procédure civile,

PRONONCE l'exequatur et déclare exécutoire en France l'ordonnance de la Haute cour de justice d'Angleterre et du Pays de Galles en date du 22 novembre 2024 rendue à l'encontre de M. Peter Protopapas,

CONDAMNE M. Peter Protopapas aux entiers dépens de l'instance, dont distraction au profit de Maître Frédéric Dabiens, avocat au barreau de Montpellier, conformément aux dispositions de l'article 699 du code de procédure civile,

DÉBOUTE la société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad de leurs plus amples demandes,

DIT n'y avoir lieu à condamnation de M. Peter Protopapas en application des dispositions de l'article 700 du code de procédure civile,

RAPPELLE que l'exécution provisoire est de droit.

Ainsi jugé et mis à disposition au greffe civil le 8 avril 2025.

La greffière

La juge

Linda Lefranc-Benammar

Florence Le Gal

MONTPELLIER COURT OF APPEAL

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N° RG 25/00122 - N° Portalis
DBYB-W-B7J-PM3N
Civil Section 2

Date: April 08, 2025

THE JUDICIAL COURT MONTPELLIER

CHAMBER: Civil section 2

rendered the following judgment:

APPLICANTS

Company Cape Plc This is a company incorporated under the laws of Jersey, represented by its legal representative, whose registered office is at 1st Floor Osprey House, 5-6 Old Street, St. Helier, JE2 3RG - JERSEY.

Cape Intermediate Holdings Limited (CIHL) This is a company incorporated under English law, represented by its legal representative, whose registered office is at 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington, W - A4 4ST - ENGLAND

S.A.S. Altrad Investment Authority (AIA) Company registered with the RCS of Béziers under number 529 222 879, in the person of its legal representative domiciled es qualité at the said head office, registered office is located at 16 avenue de la Gardie - 34510 FLORENSAC.

Mr Mohed Altrad company director,
born March 09, 1948, residing at 150 rue Le Pérugin - 34000 Montpellier, France

represented by the law firm Signature Litigation AARPI represented by Maîtres ROUHETTE and Me BARDA, litigators at the Paris bar and Maître Frédéric DABIENS of the AARPI DABIENS, KALCZYNSKI, postulant lawyer at the MONTPELLIER bar.

DEFENDER

Mr. Peter D. Protopapas Attorney-at-law, American nationality.

This document was issued abroad on December 30, 2024, in the United States of America. domiciled at: chez , 2110 N Beltline Boulevard, Columbia SC 29204 - 29204 Et ats-Unis d' Amérique

non-comparing

COMPOSITION OF THE COURT during the debates and

deliberations: President **Florence LE GAL**

Judges Cécilia FINA-ARSON
 Magali ESTEVE

In accordance with article 805 of the French Code of Civil Procedure, the parties did not object to the debates, which took place before Mrs Florence LE GAL and Mrs Cécilia FINA-ARSON, judges-rapporteur, who heard the parties and reported to the third judge the panel, Mrs Magali ESTEVE, who was duly prevented from attending.

In accordance with article 452 of the Code of Civil Procedure, the judgment was signed by Mrs Florence LE GAL, who took part in the debates and deliberations.

assisted by Françoise CHAZAL, clerk, during the debates and Linda LEFRANC-BENAMMAR, clerk, during the delivery.

DEBATS: in open court on February 11, 2025, during which the president gave an oral report on the case

DELIBERATED as of April 08, 2025

JUDGMENT: signed by the president and the clerk and made available on April 08, 2025

FACTS AND PROCEDURE

In 1893, "The Cape Asbestos Company Ltd" was founded; today it is known as Cape Intermediate Holdings Limited - hereinafter "CIHL" - with its head office in Appleton, Warrington, England, and "Cape Pic" as its holding company. The Cape Group is a supplier of industrial services and equipment to the petrochemical and energy sectors, but it also distributed asbestos fibers, notably through one of its American subsidiaries, North American Asbestos Corporation -NAAC-, which was dissolved in 1978.

In 1985, in Montpellier, the Altrad Group was founded by Mr. Mohed Altrad, who is the majority shareholder; he is also Chairman Altrad Investment Authority - hereinafter "AIA"-, the parent company of the Altrad Group registered in Béziers since 2010. The Altrad Group designs and develops solutions in the petrochemical, energy, power generation and construction sectors; in September 2017, it acquired the Cape Group.

In 2021 and 2023, U.S. proceedings in connection with a lawsuit brought by asbestos victims resulted in AIA and Mohed Altrad being summoned as "third-party defendants" by U.S. attorney Peter Protopapas, acting as court-appointed administrator.

AIA and Mr. Mohed Altrad have taken various steps to defend their interests before the US courts.

And on September 9, 2024, Cape Pic and CIHL brought an expedited claim before the High Court of Justice of England and Wales, seeking an order that Mr. Peter Protopapas cease to act or purport to act in any way in relation to this claim.

The company's legal representative.

Mr Peter Protopapas was regularly informed of the English procedure.

On November 22, 2024, the High Court of Justice of England and Wales granted the plaintiffs' claims in its combined decision of a judgment giving reasons to the English court and an order containing the operative part thereof.

On the same day, November 22, 2024, Mr. Peter Protopapas was served with the decision of the High Court of Justice England and Wales.

By order dated December 20, 2024, in accordance with articles 31, 122 and 509 of the French Code of Civil Procedure, the Cape Pic company, the CIHL company, the AIA company and Mr. Mohed Altrad were authorized to summon Mr. Peter Protopapas on a fixed date at the hearing of February 11, 2025. Peter Protopapas on a fixed date at the hearing of February 11, 2025, for exequatur of the judgment and order of November 22, 2024 handed down by the High Court of Justice of England and Wales, and they requested the Montpellier judicial court to deem their action admissible and to pronounce the exequatur against Mr. Peter Protopapas of the English decision of November 22, 2024 by the High Court of Justice of England and Wales, the operative part of which translated by a sworn translator is reproduced as follows:

"THE FOLLOWING IS DECLARED:

1. The Court Common Pleas Order for the Fifth Judicial Circuit of the State of South Carolina, Richland County (the South Court) dated March 16, 2023, appointing Mr. Peter Protopapas ("Mr. Protopapas") receiver of CIHL (the " Order"), is not recognized and has no legal effect in England and Wales and throughout the world.
2. Mr. Protopapas has and had no power or capacity to act on behalf of CIHL in England and Wales or anywhere in the world and has no power or capacity in relation to CIHL in England and Wales or anywhere in the world to do any of the acts referred to in paragraphs 6 to 10 below.
3. The rights and duties of CIHL's directors are not affected by the appointment of Mr. Protopapas CIHL's receiver under the Court Administration Order.
4. M. Protopapas has neither the power nor the ability on behalf of CIHL to act as CIHL's receiver or to bind CIHL in the South Carolina Court with respect to the Park Claim and the Tibbs Claim (as defined in Oren 1) and has neither the power nor the ability on behalf of CIHL to issue or prosecute third party claims in the Tibbs Claim against any of the third party defendants in these proceedings ("the 3P Complaint"), including (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (III) Altrad Un, (IV) Cape UN Holdings Newco Un, (v) Cape Industrial Services Group Un, (vi) Cape Holdco Un, (vii) Altrad Services Un.
5. Mr. Protopapas has and had no authority or capacity to accept service on behalf of CIHL in the claim brought the South Carolina Court by summons dated November 11, 2024 bearing claim number C/A NO. 2024-CP-40-06639 or any other legal proceeding brought against CIHL in the South Carolina Court or anywhere in the world.

AND THE FOLLOWING IS ORDERED:

6. Mr Protopapas is prohibited, in England and Wales and worldwide, from acting or purporting to act agent or otherwise on behalf of CIHL under the Court Administration Order.
7. Mr. Protopapas is prohibited, in England and Wales and the world, from appropriating, interfering with or usurping (from

- in any way whatsoever) the lawful exercise of the rights and duties of CIHL directors.
8. Mr. Protopapas is prohibited acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).
 9. Mr. Protopapas is prohibited from continuing to pursue the 3P Complaint (as defined in Oren 1).
 10. Mr. Protopapas is barred from purporting to act for CIHL in the claim brought in the South Carolina Court by summons dated November 11, 2024 bearing AIA claim number NO. 2024-CP-40-06639 or in any other legal proceeding brought against CIHL in the South Carolina Court or anywhere in the world.

Freedom to file a petition

11. The Plaintiffs will be free to request additional or related relief.

Fees

12. The Plaintiffs' costs will be paid by the Defendant on a standard basis, as a detailed assessment in the event of disagreement.
13. The Claimants will be at liberty to request an advance on costs."

In the same writ of summons, the plaintiffs asked the court to reject all of Mr. Protopapas' pleas and submissions to the contrary, and to order him to pay 50,000 euros under article 700 of the French Code of Civil Procedure, plus all costs, which were to be paid to Maître Frédéric Dabiens, a member of the Montpellier bar, in accordance with article 699 of the French Code of Civil Procedure.

No lawyer has been appointed for Mr. Peter Protopapas, the summons having delivered to his address on December 30, 2024, in accordance with the provisions and formalities of the Hague Convention of November 15, 1965, on the service of judicial and extrajudicial documents in the Member States.

Pursuant to the provisions of article 455 of the French Code of Civil Procedure, for further details of the facts, claims and arguments of Cape Pic, CIHL, AIA and Mohed Altrad, reference is expressly made to the summons serving as their final submissions, duly notified by bulletin to the R.P.V.A..

The closing order was issued on February 11, 2025, with an oral hearing scheduled for the same date, February 11, 2025. The decision was reserved until April 8, 2025.

REASONS FOR DECISION

According article 472 of the French Code of Civil Procedure, when the defendant does not appear, a decision is nevertheless taken on the merits of the case, and the judge only grants the claim if he considers it to be in order, admissible and well-founded.

On the request exequatur

Under article 509 of the Civil Code, *judgments handed down by foreign courts and deeds received by foreign officers are enforceable in the territory of the Republic in the manner and in the cases provided for by law.*

The Cape company, the CIHL company, the AIA company and Mr. Mohed Altrad are asking the court to declare the order of November 22, 2024 of the High Court of England and Wales enforceable, the operative part of which is reproduced above.

In the absence of any international convention applicable to exequatur of decisions handed down by foreign courts, which is the case here between the French Republic and England, the French court seized an application for exequatur must ensure that three cumulative conditions are met: the indirect jurisdiction of the English judge who handed down the decision which is the subject of the application exequatur, the conformity of the latter international public policy in terms of substance and procedure, and the absence of fraud.

● the indirect jurisdiction of the foreign court, based on the connection of the dispute to the court in question

According to the case file, in 2021, an asbestos victim, Ms. Isabella Park, was sued by Cape Pic and CIHL as defendants in the U.S. District Court for Richland County, South Carolina, under case number 2021-CP-40-02727, heard by Judge Jean Hoefer Toal.

On March 16, 2023, an order was issued appointing personal injury lawyer Peter Protopapas as receiver of Cape PLC 3 successor in title to Cape Industries Ltd, formerly Cape Asbestos Company Ltd.

On April 5, 2023, a second U.S. was filed, this time against Cape Pic by the "Tibbs spouses": this case was registered under number 2023-CP-40-01759 and was also heard by Judge Jean Hoefer Toal. Notwithstanding the absence of a court order in latter case, and consequently the absence of the appointment of a receiver for Cape Pic or any other company in the Cape Group, Mr. Peter Protopapas nevertheless intervened in these proceedings in his capacity as receiver.

On June 12, 2023, under the terms of an agreement between Mr and Mrs Tibbs and Mr Peter Protopapas, Mr and Mrs Tibbs withdrew their case and action against Cape Pic: the trial court in Richland County, South Carolina, USA, was thus relieved of the main action against Cape Pic.

However, on June 30, 2023, AIA and Mohed Altrad were summoned as "third-party defendants" in the Tibbs case by Peter Protopapas, Cape Pic's insolvency administrator; under the terms of the summons issued on June 30, 2023 by Protopapas, AIA and Mohed Altrad, in their capacity as third-party defendants, were to be declared liable for all the obligations of Cape Pic and CIHL in respect of alleged unjust enrichment and fraudulent concert. Mohed Altrad, as third-party defendants, be declared liable for all the obligations of Cape Pic and CIHL in respect of alleged unjustified enrichment and fraudulent conspiracy to avoid conviction in the United States in connection with distribution of asbestos by NACC in the 60s and 70s. AIA and Mr. Mohed Altrad have taken all necessary steps to support their interests before the American courts, and a hearing on the merits has been scheduled for the week of February 3 to 7, 2025.

In the meantime, on September 9, 2024, Cape Pic and CIHL, both companies incorporated under English law, brought an accelerated procedure before the High Court of Justice of England and Wales, seeking an order requiring Mr. Peter Protopapas to cease acting or purporting to act as receiver of Cape Pic and CIHL, and to assume the status legal representative of CIHL.

On November 22, 2024 the High Court of England and Wales handed down an order, the essence of which is described above, upholding the claims of Cape Pic and CIHL.

Cape Pic and CIHL are two English companies, the registered in Jersey, a British island, and the latter in Appleton, Warrington, England.

To defend their interests in the dispute with Peter Protopapas, appointed in South Carolina in the United States receiver, in defiance of English law and the applicable rules of jurisdiction, they turned to the English judge on the grounds that their principal place of business, their assets and their governing bodies are located in England.

The dispute is thus clearly connected with England: the indirect jurisdiction of the English court must be recognized.

- conformity of this order with international order

The aforementioned order does not involve any violation French international public policy: it is therefore fully compliant with international public policy.

- absence of fraud

With regard to the absence of fraud, it must be ensured that the English court was not seized by Cape Pic and CIHL, even though the dispute did not fall within its jurisdiction, with a view to circumventing the rules applicable in France, particularly with regard to the economic damage caused to these companies. It has to be said that, in the case in point, fraud has been .

All conditions having been satisfied, the order of the High Court of Justice of England and Wales dated November 22, 2024 is hereby granted, and will be enforceable in France.

Ancillary requests

Under the terms of article 696 of the French Code of Civil Procedure, the losing party is ordered to pay the costs, unless the judge, by reasoned decision, orders the other party to pay all or part of them.

Mr. Peter Protopapas should ordered to pay all the costs of the proceedings, which will be awarded to Maître Frédéric Dabiens, a member of the Montpellier bar, in accordance with the provisions article 699 of the French Code of Civil Procedure.

Under terms of article 700 of the French Code of Civil Procedure, the judge orders the party liable for costs or who loses the case to pay :

1° To the other party, the amount it determines, in respect of costs incurred and not included in the costs;

2° And, where applicable, to the lawyer of the beneficiary of partial or total legal aid, a sum in respect of fees and expenses, not included in the costs, which the beneficiary of aid would have incurred had he not received such aid. In this case, the procedure is as described in paragraphs 3 and 4 of article 37 of law no. 91-647 of July 10, 1991.

In all cases, the judge takes into equity or the economic situation of the condemned party. He may, even of his own motion, for reasons based on the same considerations, rule that there are no grounds for such sentences.

The parties may produce proof of the sums they claim. The amount awarded under 2° may not be less the State's contribution plus 50%.

In the present case, and in view of the fact that Mr. Peter Protopapas was not present during the proceedings, there is no reason to order him to pay irreducible costs.

Please note that provisional execution is automatic.

FOR THESE REASONS

The court rules publicly, by default, in first instance, by making the judgment available at the clerk's office, the parties having been previously notified in accordance with the conditions set out in the second paragraph of article 450 of the French Code of Civil Procedure,

PRONOUNCES the exequatur and declares enforceable in France the order of the High Court of Justice of England and Wales dated November 22, 2024 against Mr. Peter Protopapas,

ORDERS Mr. Peter Protopapas to pay all the costs of the proceedings, which will be awarded to Maître Frédéric Dabiens, a member of the Montpellier bar, in accordance with the provisions of article 699 of the French Code of Civil Procedure,

DISMISSES Cape Pic, CIHL, AIA and Mohed Altrad's further claims,

RULES that there are no grounds for an order against Mr. Peter Protopapas under the provisions of article 700 of the French Code of Civil Procedure,

RECALLS that provisional execution is automatic.

Thus judged and made available at the civil clerk's office on April 8, 2025.

The clerk

The Judge

Linda Lefranc-Benammar

Florence Le Gal

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Altrad Defendants' Response to the Supreme Court's May 8, 2025
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May 19, 2025