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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT’S ORIGINAL JURISDICTION
CONCERNING A PETITION FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2024-001423, 2024-001499, 2025-002120, and 2025-002121

John A. Tibbs and Margaret B. Tibbs,..... Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated;

Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, Defendants,

of which

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,..... Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, Third-Party Defendants,

of which

Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd; Mohed Altrad; and Altrad Investment Authority SAS, are, in their respective cases, the..... Petitioners.

ALTRAD PETITIONERS' RESPONSE TO MOTION TO STRIKE

The Petitioners submit this response to the Receiver's Motion to Strike (Nov. 3, 2025) to ensure that the record before this Court remains complete and transparent. The Receiver's motion claims that (1) the Petitioners' filings were procedurally improper, (2) the circuit court's new actions are immaterial, and (3) this Court should disregard those actions even as the Receiver has sought secrecy orders below. Each of those points is addressed briefly.

Material developments. As detailed in the Petitioners' filings, the circuit court has entered orders that are material to the issues presented to this Court while these matters have been pending with the Court:

- The circuit court vacated the October 13, 2025 receivership order entered in *Park v. Armstrong*, which purported to be an appointment order in the *Park* case that complied with this Court's recent pronouncements regarding the requirements for a receivership appointment; and
- Without notice or a hearing, the circuit court approved a "Qualified Settlement Fund" to be funded by a purported "settlement" reached by the putative Receiver in the *Tibbs* third-party action. The order purports to authorize the Receiver to act "in the name of CIHL" in cases *other than Tibbs* (and to waive service on behalf of CIHL for future unknown claims) even though this Court expressly held that South Carolina law allows a prejudgment receiver appointed under Title 15 may only marshal assets only to satisfy a judgment for the specific plaintiff who responsible for the receivership appointment; here, there is no such plaintiff.

The putative Receiver disputes the Petitioners' description of the activity below, but the circuit court's orders and the related documents speak for themselves. The Petitioners provided these materials to this Court specifically so it could stay informed as it manages these proceedings.

In particular, the putative Receiver suggests it is a mischaracterization to say that the purported QSF claims to give him authority to engage in “boardroom” activity on behalf of CIHL (which is not even a party to these proceedings). But then he concedes this exact point.

The putative Receiver claims that he has created a “fund for South Carolina victims”—of which there are none (even the *Tibbs* plaintiffs are from *North* Carolina)—and he admits that the QSF order authorizes him to “evaluate, and if meritorious, resolve claims relating to bodily injuries resulting from Cape asbestos products in South Carolina without the claimant first having served Cape.” (Mot. to Strike at 4.) Then in the very next passage, the putative Receiver confirms that he has “discretion to waive the service requirement” on CIHL prior to channeling money to “claimants,” and that he intends to pay these “claimants” with “Cape’s assets” controlled by him in the QSF. (*Id.* at 5.)

Taking the putative Receiver’s position at face value, the breadth of this authority is unprecedented and is squarely contrary to *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 667, 916 S.E.2d 320, 334 (2025), *petition for cert. filed at* Case No. 25-213 (U.S. Aug. 18, 2025), where this Court forbid a receiver from attempting to address any claim beyond that asserted by the party requesting the appointment of a prejudgment receivership. (Here, neither the Park Estate nor any *Tibbs* plaintiffs moved for the appointment of a receiver over any Cape entity—the putative Receiver is the only person who requested such authority, which is itself a violation of South Carolina law, as explained in the Petitions for Extraordinary Writs.)

A receiver in South Carolina cannot lawfully seize power to accept service, waive service, or resolve claims by unknown “claimants” in the name of an active English company. This is true as a matter of U.S. Constitutional law, *e.g.*, *Protopapas v. Brenntag AG (In re Whittaker, Clark &*

Daniels, Inc.), 152 F.4th 432, 2025 U.S. App. LEXIS 23439, at *17–20 (3d Cir. 2025), and it is true as a matter of South Carolina law, *e.g.*, *Welch*, 445 S.C. at 667, 916 S.E.2d at 334–35.

In addition to the admitted violation of the very point on which *Welch* reversed the circuit court, the putative Receiver’s motion misstates the breadth of the QSF materials. The “fund” is not “for South Carolina victims,” as the putative Receiver states in his motion. Instead, it defines “Cape Asbestos Suits” as any kind of claim that is “brought in South Carolina.” (Attachment, “Operating Agreement” § 1.2(i).) In other words, it is an invitation to sue CIHL in South Carolina, regardless of the domicile of the plaintiff (*e.g.*, the *Tibbs* plaintiffs, who are not South Carolinians). The “Operating Agreement” also states: “Claimants shall serve Cape Asbestos Suits on Cape Intermediate Holdings Ltd. in England, but the Manager [*i.e.*, the putative Receiver] has discretion to waive such requirement.” (*Id.* § 3.2.) And it authorizes the putative Receiver to “pay for legal fees and settlement costs” on behalf of CIHL “pending reimbursement or indemnification by other responsible third parties”—apparent authorization for the putative Receiver to sue others in CIHL’s name seeking “reimbursement or indemnification.” (*Id.* § 1.2(iv).) Each of these actions has been confirmed to be outside the bounds of the law that has been carefully stated by this Court.

It cannot possibly comport with Due Process for the circuit court to first, ignore the very points on which *Welch* reversed the circuit court; second, authorize a putative Receiver (who has never been lawfully appointed in the first place) to accept service and then resolve claims on behalf of an English company that is not even before a South Carolina court; and third, authorize a putative Receiver to try and recover money from “third parties” in CIHL’s name under the fictional narrative that the putative Receiver is merely marshaling assets (which no plaintiff has lawfully asked him to do so, as CIHL has no property, debts, judgments, or claims pending against it in

South Carolina) that will be used to pay himself, his counsel, and unknown future claimants outside of public view.

* * * * *

These latest actions below underscore the very conflict the Petitions were filed to resolve. This continued *ultra vires* conduct, which is in express disregard of this Court’s rulings in *Welch* and *Tibbs*, is the exact subject of the Petitioners’ requests for a common-law writ of certiorari.

Requested disposition. The Receiver now asks this Court to strike the very filings that reveal those developments—asking this Court to effectively to blind itself, and the public record, to what has occurred (and is occurring) below. Transparency, not secrecy, serves both the integrity of these proceedings and this Court’s supervisory role.

While the putative Receiver suggests that this Court cannot do anything about the ongoing proceedings below, the South Carolina Constitution gives the Court full authority to intercede to maintain the status quo while it considers the Petitions. *See* S.C. Const. art. V, § 5 (“The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs.”); *Climer v. Loftis*, Appellate Case No. 2025-00111 (S.C. Sup. Ct. Order June 25, 2025) (enjoining disbursement of funds to legislators while the Court considers in its original jurisdiction the constitutionality of a proviso that potentially increases legislative pay); *In re S.C. State Senate Republican Caucus v. Harpootlian*, Appellate Case No. 2019-001404 (S.C. Sup. Ct. Order Dec. 12, 2019) (“We, therefore, issue a writ of prohibition to prevent the circuit court from improperly exercising jurisdiction over this matter and vacate the order of the circuit court, filed on July 8, 2019, denying Petitioner’s motion for summary judgment and granting Respondent’s motion to compel discovery.”)

Accordingly, the Motion to Strike should be denied, and Petitioners' filings should be accepted as proper supplemental submissions.

Respectfully submitted,

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