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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, Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case Nos.: 2025-002104

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 Corandp.; 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.; Bahnsen, 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 Corporation; 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, Inc.; 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; Zurn Industries, LLC.....DEFENDANTS,

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., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo 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 (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) 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 S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., Arran Co US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC
.....THIRD-PARTY DEFENDANTS,

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.; Mohed Altrad; and Altrad Investment Authority SAS are the..... APPELLANTS

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MEIROWITZ AND WASSERBERG, LLP, AND MAUNE, RAICHLE, HARTLEY,
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STATEMENT OF ISSUES

Did the Circuit Court err in appointing a receiver over Cape pursuant to S.C. Code Ann. §§ 15-65-10(4) and 15-65-10(5)?

TABLE OF AUTHORITIES

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STATEMENT OF INTEREST OF AMICUS CURIAE

Motley Rice, LLC, Rogers, Patrick, Westbrook, and Brickman, Meirowitz and Wasserberg, LLP, and Maune, Raichle, Hartley, French, and Mudd, LLC (“Law Firms”) are law firms that represent plaintiffs with mesothelioma and other asbestos-related diseases in South Carolina and in other states throughout the country. Through this longstanding representation of such individuals, these law firms are aware of the culpability of certain entities and corporations, both domestic and foreign, in the wave of mesothelioma and other asbestos-related diseases that have decimated families for decades, and have worked to hold those responsible accountable for the harms they have caused.

Until the Circuit Court appointed a Receiver for Cape Intermediate Holdings Limited, formerly known as Cape PLC from 1989-2011, Cape Industries Limited from 1974 to 1989, and Cape Asbestos Company Ltd. from 1893 to 1974 in *Tibbs v. 3M Company, et. al.*, the suit forming the basis for this appeal, Cape and its subsidiaries, holding companies, successors, and other related entities (collectively, the “Cape Defendants”) had avoided the United States tort system and never truly answered for their gross misconduct. In many respects, the Cape Defendants, by virtue of being the source for a large percentage of the amosite and crocidolite asbestos sold to and ultimately used in the United States, and the scheme in which they managed to avoid being held responsible or even answering for their conduct, are among the most culpable of all defendants in asbestos litigation.

The Law Firms are interested in this appeal in two separate but related respects: 1) seeing the Cape Defendants being held accountable for their moral fraud, prior misconduct, and contempt for South Carolina’s judicial system; and, 2) deterring and discouraging conduct similar to that of the Cape Defendants by defendants that are similarly situated in asbestos litigation.

INTRODUCTION

The Law Firms are aware of the flood of appeals from South Carolina's asbestos docket to this Court and will not recite the facts of the underlying case. The Circuit Court's Order currently on appeal is clear that the Cape Defendants flooded South Carolina and the United States with asbestos for decades and did so with full knowledge of the carcinogenic and deadly characteristics of their asbestos. The Cape Defendants did this with, by their own terms, no moral regard or responsibility to the citizens of South Carolina or the United States. The Cape Defendants did this with an unambiguous scheme to never have to appear or answer for their conduct in South Carolina or any other state in the United States. The Cape Defendants reaped the financial benefits of their sale of asbestos into South Carolina while South Carolinians have suffered and died, and will continue to suffer and die, as a result of the Cape Defendants' actions.

However, the Cape Defendants were finally forced to answer for their egregious conduct and moral fraud when the Circuit Court placed Cape Intermediate Holdings Limited, formerly known as Cape PLC from 1989-2011, Cape Industries Limited from 1974 to 1989, and Cape Asbestos Company Ltd. from 1893 to 1974 into receivership pursuant to both S.C. Code Ann. §§ 15-65-10(4) and (5).

The Circuit Court, acting in its discretion, applied the proper remedy under both statutory subsections. To rule otherwise both absolves the Cape Defendants of ever answering for their morally fraudulent conduct while at the same emboldening other tortfeasors, whether in asbestos litigation or not, to engage in actions of moral fraud similar to that of the Cape Defendants.

STANDARD OF REVIEW

“[T]he matter of ordering a receivership is very much within the discretion of the circuit judge.” *In re Citizens' Exch. Bank of Denmark*, 140 S.C. 471, 139 S.E. 135, 142 (1927)(citing *Chisolm v. Carolina Agency Co.*, 88 S.C. 438, 70 S.E. 1035; *Jackson v. S. C. Colored State Fair Ass'n*, 109 S.C. 283, 96 S. E. 116; *Thompson v. Thompson*, 120 S.C. 230, 112 S.E. 925). “The turning point here, then, is whether or not the circuit judge, on the related facts which were before him, committed such an abuse of the discretion placed in him by the law as would justify this court in reversing his discretion.” *Id.*

ARGUMENT

I. The Appointment of a Receiver was Proper Pursuant to S.C. Code Ann. § 15-65-10(5) and Public Policy Requires the Appointment of a Receiver When Courts are Faced with Clear Evidence of Moral Fraud

Mesothelioma is a universally fatal cancer caused by exposure to asbestos. The Law Firms have filed and litigated, collectively, thousands of cases in which people have suffered and died because of exposure to asbestos. The Law Firms have seen the toll these diseases take on individuals as well as the toll it takes on their families and caretakers. As outlined by the Circuit Court, the Cape Defendants acted with full knowledge of the relationship between exposure to asbestos and the development of mesothelioma and other asbestos-related diseases when it made its decision to enter into the United States market and sell asbestos into South Carolina. Yet, despite reaping untold profits from selling asbestos into the South Carolina market, and continuing to harm South Carolinians even after the relationship between asbestos and disease was uncontroverted, it had a plan in place to never appear or answer in a South Carolina courtroom for its conduct.

Defendants in South Carolina asbestos litigation (including defendants placed into receivership by this Circuit Court pursuant to S.C. Code Ann. § 15-65-10(4)) routinely answer complaints, meaningfully participate in discovery, present defenses, and resolve cases when warranted. The Cape Defendants, however, contrary to the actions of essentially every other defendant routinely named in South Carolina asbestos litigation (both in-state and foreign defendants), have taken the position that they are above the law and can benefit from selling deadly products in South Carolina, while refusing to participate in lawsuits resulting from these sales when called upon to do so. The moral fraud upon South Carolina's population and judiciary warranted the trial court placing Cape into receivership pursuant to S.C. Code Ann. § 15-65-10(5).

This Court's opinion in *Welch* is instructive, as the Court stated that South Carolina's judicial system requires litigants to meaningfully participate even if they disagree with the rules and orders. *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 657, 916 S.E.2d 320, 329 (2025) (“Anyone entering and profiting from a business market in South Carolina that our laws and courts helped foster has fair warning that any wrongs he commits here will be subject to the remedies of those same courts. He also has notice that should he create harm to the citizens of this state, it would be reasonable and fair that our citizens could sue him here, rather than having to travel to pursue him elsewhere.”).

Moreover, as this Court further recognized in *Welch*, there is a time when a defendant's conduct cannot be allowed to continue. Similar to Atlas Turner in *Welch*, whose conduct precipitated the appointment of a receiver pursuant to S.C. Code Ann. § 15-65-10(5), the Cape Defendants, “when faced with lawsuits—for allegedly causing serious injury and death to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known—its tactic has been to claim that, if the courts exerted jurisdiction over them, it would offend the ‘traditional notions of fair play and substantial justice’ due process guarantees.” *Id.* (at 660 and 331). In appointing a Receiver over Atlas Turner in *Welch*, this Court stated that it was not inclined to affirm a trial court's appointment of a Receiver before judgment except in the rarest case. The Cape Defendants' conduct is the textbook definition of the rarest of cases as they have been engaged in a multidecade conscious and deliberate pattern to defeat, delay, hinder, and intimidate anyone attempting to hold them responsible.

The ability of a trial court to appoint a receiver “when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts” has been the law in South Carolina

for over 115 years and the Circuit Court acted with in its' discretion in appointing a receiver in this case. *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909)(citing *Miller v. Hughes*, 33 S.C. 541, 12 S.E. 419 (1890)).

The Cape Defendants' scheme, both to inundate South Carolina with deadly asbestos while formulating an official company policy to never answer for this conduct in a South Carolina court, cannot be tolerated. South Carolina's judicial system operates effectively because of the willing participation by both plaintiffs and defendants and the respect for South Carolina's rules and procedures. Allowing the Cape Defendants to sell asbestos into South Carolina, contribute to the suffering and death of thousands of South Carolinians, with full knowledge of the damage caused, and then never have to meaningfully participate in a lawsuit or even make an appearance would only serve to embolden others similarly situated.

Similar to Atlas Turner in *Welch*, the Cape Defendants had the opportunity to make an appearance, defend themselves, and assert any available defense at their disposal. However, the Cape Defendants chose to do none of the above and have instead refused to participate in the South Carolina judicial system while at the same time strongarming third-parties who are willing participants in this same system. The appointment of a receiver over the Cape Defendants is, and was, the only remedy available to the Circuit Court and the Circuit Court did not abuse its discretion when appointing a receiver.

II. The Appointment of a Receiver was Proper Pursuant to S.C. Code Ann. § 15-65-10(4)

When faced with evidence of the decadeslong moral fraud perpetrated by the Cape Defendants, the Circuit Court acted within its discretion when it placed the Cape Defendants in receivership pursuant to S.C. Code Ann. § 15-65-10(5). The Circuit Court also acted within its

discretion in appointing a receiver pursuant to S.C. Code Ann. § 15-65-10(4) because a legitimate concern existed that the Cape Defendants would go to any length, including rendering the company insolvent, to avoid their historic asbestos liabilities in the United States once forced to answer for their gross indifference to the health and safety of South Carolinians.

The Cape Defendants' actions, as discovered by the Receiver after his appointment and outlined in the Circuit Court's Order, confirm these suspicions as a series of corporate transactions purport to release Mohed Altra from any asbestos liability in any future asbestos action against any Cape entity. Even when the Cape Defendants' scheme was uncovered, their subsequent actions make clear they will stop at nothing in order to evade payment to persons suffering from mesothelioma and other asbests-related diseases caused by exposure to their asbestos.

Public policy requires companies that target the South Carolina market, financially benefit from the South Carolina market, and sell dangerous products directly into the South Carolina market, ultimately answer to the South Carolina judicial system for the harm they have caused. This includes participating in basic discovery as to their financial ability to cover judgments and not engaging in corporate wrongdoing to conceal or dissipate assets. The Cape Defendants' actions required the Circuit Court to appoint a receiver pursuant to S.C. Code Ann. § 15-65-10(4) and the Circuit Court acted within its' discretion in appointing a Receiver.

CONCLUSION

The Cape Defendants knowingly and deliberately sold their asbestos into South Carolina with a complex orchestrated scheme to never submit to the authority of South Carolina's judicial system. Affording legitimacy to such conduct, and allowing it to persist without consequence, both undermines the integrity of South Carolina's judicial system and invites similarly situated defendants to evade accountability by whatever means necessary.

Both a sustained pattern of moral fraud and a concrete danger of insolvency, independently, justify the receivership remedy, and together they make the receivership essential to protect litigants and the integrity of the judicial process. The Circuit Court's appointment of a receiver was lawful, necessary, and consistent with South Carolina precedent dating back over a century. The Law Firms respectfully urge this Court to affirm the order below.

Respectfully Submitted this 30th day of December 2025,

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