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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Richland County  
In the Court of Common Pleas  
For the Fifth Judicial Circuit  
The Honorable Jean H. Toal,  
Acting Circuit Court Judge

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Civil Action No. 2023-CP-40-01759

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Appellate Case No. 2025-002104

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

Third-Party Defendants

of which

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

Appellants.

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**ASBESTOS VICTIMS' AMICI CURIAE BRIEF**

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## INTRODUCTION AND STATEMENT OF INTEREST OF *AMICI CURIAE*

The undersigned law firms frequently represent South Carolina asbestos victims. These victims of asbestos exposure (collectively the “Asbestos Victims *Amici Curiae*”), have a uniquely strong interest in this appeal. The Asbestos Victims *Amici Curiae*, like millions of others nationwide, are the unfortunate victims of the widespread, historic deception, obfuscation, and conscious indifference that resulted in their regular and unknowing exposure to asbestos and asbestos-containing products. Those asbestos exposures ultimately caused their asbestos-related illnesses and, all too often, their premature deaths.

Legal recourse against certain asbestos industry barons, however, was deliberately thwarted by unlawful, morally bereft schemes designed to shield the profits of their villainous conduct by evading tort remedies afforded by South Carolina law. Cape Intermediate Holdings Limited, formerly known as Cape PLC, Cape Industries Limited, and Cape Asbestos Company Ltd. (the “Cape Defendants”), is one of those asbestos profiteers. Indeed, the Cape Defendants “and its affiliates . . . produc[ed] approximately 90 percent of the world’s supply of all grades of amosite asbestos . . . .” *Hammond v. N. Am. Asbestos Corp.*, 454 N.E.2d 210, 217 (Ill. 1983). (*Accord* R. at 010, 2330.) Despite its overwhelming monopoly over amosite asbestos, the Cape Defendants impermissibly managed to avoid United States courts—functionally becoming judgment proof—by implementing a variety of improper schemes designed to obfuscate its liability. (*See* R. at 12-15, 2333-2335.) Fortunately, the Circuit Court’s appointment of a receiver below

unwound the Cape Defendants' unjust scheme of avoidance and reopened the only avenue of relief against the Cape Defendants for the Asbestos Victims *Amici Curiae*.

Accordingly, the Asbestos Victims *Amici Curiae* are interested in this appeal for two interrelated reasons. *First*, to preserve the only opportunity and forum for redress against the Cape Defendants. *Second*, to deter other asbestos defendants from concocting schemes intended to impermissibly usurp South Carolina law and the remedies afforded thereunder.

### STANDARD OF REVIEW

“The appointment of a receiver is within the discretion of the circuit judge.” *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (quoting *Midlands Util., Inc. v. S.C. Dep’t of Health & Envtl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)) (internal brackets omitted). “An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support.” *Id.* (quoting *Charleston Cty. Sch. Dist. v. Charleston Cty. Election Comm’n*, 336 S.C. 174, 179, 519 S.W.2d 567, 570 (1999)); *see also Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) (“An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.”).

### ARGUMENT

“South Carolina has well developed-tort based doctrines which can redress wrongs resulting in personal injuries sustained by an individual.” *Overcash v. S.C. Elec.*

*& Gas Co.*, 364 S.C. 569, 575, 614 S.E.2d 619, 622 (2005). South Carolina’s tort regime rests upon the maxim *volens intrat, volens subit legem fori* – i.e., “[a]nyone 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.” *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 657, 916 S.E.2d 320, 329 (2025). That foundational principle is particularly poignant in the context of asbestos litigation where “[t]he courts were, and largely remain, the only viable agency for redress.” *In re Joint E. & S. Dists. Asbestos Litig.*, 237 F. Supp. 2d 297, 302 (E.D.N.Y. 2002).

Despite those well-defined tort doctrines, the Cape Defendants themselves determined that they were not subject to the authority of South Carolina courts, and that South Carolinians had no legal recourse for the injuries they inflicted. The Cape Defendants’ conduct has denied the Asbestos Victims *Amici Curiae* from access to the courts and impermissibly stripped the remedies afforded by law of all practical force.

The Cape Defendants were headquartered in the United Kingdom and therefore did not escape their historic asbestos liability to workers in the U.K. Asbestos victims in the U.K. can apply to a settlement fund created and maintained by the Cape Defendants and Altrad called a Scheme of Arrangement for compensation for these asbestos claims in the U.K. The Scheme of Arrangement for the Cape Defendants is a “court-ordered scheme created to provide compensation to individual claimants for asbestos-related occupational diseases contracted as a result of the Cape Group’s historical use of asbestos in the manufacturing processes and which are not eligible for compensation under the insurance policies.” (See Altrad Half-Year Report 2025 at 32, (R. at 5568).)

The Asbestos Victims *Amici Curiae* appreciate that the Receiver has now established a similar Qualified Settlement Fund where meritorious South Carolina claims against the Cape Defendants may receive compensation for the grievous injuries and deaths they have suffered as a result of their exposure to the Cape Defendants' asbestos.

Fortunately, the appointment of a receiver by the Circuit Court below markedly changed the prospects of redress for asbestos victims against the Cape Defendants. Indeed, South Carolina asbestos victims are now afforded the ability to hale the Cape Defendants into a South Carolina court, seek justice against them, and enforce all court orders against them, including any judgment. Unwinding the receivership at this juncture will deprive South Carolina asbestos victims both access to the courts and remedies afforded by law as to the Cape Defendants. The Court should decline to unwind the receivership.

### CONCLUSION

Permitting the Cape Defendants to shield themselves from any liability and damages associated with knowingly inundating South Carolina with deadly asbestos defies this State's jurisprudential tort principles. Further, such conduct only serves to embolden other similarly situated actors to engage in similar misconduct. Worse yet, it deprives South Carolina plaintiffs from both their day in court and just compensation for injuries caused by tortious conduct. Accordingly, this Court should decline to unwind the Cape Defendants' receivership.

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February 10, 2026