

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Feb 17 2026

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 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 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 in Related Case,

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 the..... Appellants.

ALTRAD APPELLANTS’ RESPONSE TO NEW INDY’S BRIEF

Respectfully submitted,

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TABLE OF AUTHORITIES

Cases

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Williams v. Williams, 436 S.C. 550, 873 S.E.2d 785 (Ct. App. 2022) 1

RESPONSE TO NEW INDY’S AMICUS BRIEF

New Indy’s amicus filing is most puzzling. Rather than offering insight into its own purported institutional interests or addressing broader legal principles that might assist the Court—as a true amicus would—the first four sections are devoted to arguing procedural points about the underlying dispute.

Why, for instance, does New Indy think its opinion is relevant whether “Appellants waived the defense of lack of personal jurisdiction”? (Amicus at 6.)¹

Why does it offer any opinion about whether the putative Receiver may try to take action in CIHL’s name that are specifically designed to inflict harm on CIHL? (*Id.* at 7–9.)

Why does it repeatedly mischaracterize the contents of the order on appeal in order to lend it an appearance of legitimacy when controlling law says otherwise? (*Id.* at 10–11.)

The answers are easy.

In cases where New Indy faces genuine exposure to substantial liability, it is represented by the same counsel as the putative Receiver’s here: Morgan Lewis and Smith Robinson. *See, e.g., Butler v. New Indy Catawba LLC*, Case No. 0:22-cv-2366-SAL (D.S.C.) (Morgan Lewis and Smith Robinson (including specific attorneys who are also counsel of record for putative receiverships) appearing as counsel for New Indy in claims arising under the Clean Air Act); *Chin v. New Indy Catawba LLC*, Case No. 0:23-cv-602-SAL (D.S.C.) (same counsel appearing for New Indy in claims arising under the Clean Water Act and the Resource Conservation and Recovery Act).

¹ On this issue, New Indy points only to *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987), a case decided under the “special appearance” process that *predates* the South Carolina Rules of Civil Procedure. Now, in South Carolina, “[a] defendant cannot be said to have waived personal jurisdiction merely because he alerts the court to other types of jurisdictional defects.” *Williams v. Williams*, 436 S.C. 550, 589, 873 S.E.2d 785, 806 (Ct. App. 2022) (quoting *Maybin v. Northside Corr. Ctr.*, 891 F.2d 72, 75 (4th Cir. 1989)).

Neither the Court nor the Altrad Appellants have visibility into what arrangements may exist among the Plaintiffs, New Indy, and the putative Receiver that resulted in this amicus filing. But the undisclosed overlap of counsel and aligned interests perhaps explain the bizarre (and legally incorrect) advocacy by New Indy as to procedural points of the underlying dispute. And it also explains why New Indy tries to sweep away undisputed violations of the U.S. Constitution and South Carolina statutory law as mere “technical objections” and “critiques” (Amicus at 9–10 & n.1), instead of acknowledging the dispositive nature of the issues thoroughly addressed in the Altrad and Charter Appellants’ briefs.

Where New Indy ventures beyond parroting the putative Receiver’s talking points and attempts to chart new territory, its arguments fail on their face. Argument Section V urges the Court to ignore the actual law and leave this receivership scheme in place because it ensures “equitable allocation” of liability and “promotes economic stability.” (*Id.* at 12–13.) Neither argument withstands even minimal scrutiny.

As to the former point, there is no such thing as abstract “equitable allocation” of liability in the Asbestos Docket. Before a jury returns its verdict, tort liability has no defined damages amount that any individual or a pool of defendants may collectively owe. Because tort damages are unknown before a jury makes its decision, a dollar paid by one defendant to settle an asbestos claim does not reduce the plaintiff’s incentive—or appetite—to secure another dollar from all other defendants. The suggestion that “receiverships” somehow reduce demands and settlements for defendants within the Asbestos Docket is pure fiction.

As to the latter, these receiverships destroy economic stability, and this case vividly proves the point. The Altrad Appellants bought controlling shares in CIHL in a public tender offer in 2017 knowing that the full scope of CIHL’s potential liability to claims was controlled by: (1) *Adams*,

which was a unanimous appellate decision in 1990 by a court with jurisdiction (R. p. 2661); and (2) the court-ordered, court-approved, and court-monitored Scheme of Arrangement to pay claimants from 2006 (R. pp. 2779–81). But now, they—a French company and an individual French citizen—find themselves defending against claims that a plaintiff’s attorney in Columbia, South Carolina, is allowed to ignore *Adams*, ignore the Scheme of Arrangement, ignore all jurisdictional boundaries, and ignore the decision-making authority of CIHL’s actual directors (in England) and attempt to generate “billions” of dollars in liability, based on alleged conduct by other companies decades ago, in a state court with which the Altrad Appellants have no contact.

To describe this as “stability” is not credible in any way.

And CIHL isn’t an isolated case.

As National Union explained on Pages 1 and 2 of its amicus filing, the putative Receiver has tried to do the same to Payne & Keller—a Texas company that dissolved in 1986 pursuant to Texas law, and which has been immune from suit as a matter of Texas law since 1989. Despite Payne & Keller being a foreign corporation with no possibility of liability under controlling Texas statutes, the putative Receiver sought to resurrect it, transplant its corporate identity from Texas to South Carolina, and waive statutory defenses that have barred suit against Payne & Keller for decades. And when Texas lawyers attempted to use Texas law to defend Payne & Keller against those statutorily-barred claims, the putative Receiver sued them personally in South Carolina. *Protopapas v. Baker*, Case No. 2023-CP-40-05203. Fortunately, the Texas Court of Appeals has begun correcting that course. It recently held the order from the South Carolina Asbestos Docket upon which the putative Receiver relied to manufacture liability for Payne & Keller wasn’t entitled to Full Faith & Credit. *Nat’l Union Fire Ins. Co. v. Payne & Keller Co.*, No. 14-23-00899-CV, 2026 LX 73213 (Tex. Ct. App. Feb. 3, 2026).

The pattern repeats.

ACL is a Canadian company that has also been subject to a receivership order from the Asbestos Docket. The “receivership” activity in South Carolina forced ACL to seek bankruptcy protection in Canada, prompting the Canadian court to explain that the putative Receiver’s behavior—“which is astonishing in the eyes of a court rooted in Canadian (or British) judicial culture”—had “seriously compromised” ACL’s ability to defend itself in litigation and placed the company in “dire straits.” R. p. 3022, *In re Plan of Arrangement or Compromise of Asbestos Corporation Limited*, Case No. 235-11-000008-259, ¶¶ 23–29 (Superior Court of Quebec, July 30, 2025).

The pattern repeats.

Whittaker Clark & Daniels is a New Jersey company that has also been subject to a receivership order from the Asbestos Docket. That company sought protection in bankruptcy court from the putative Receiver’s misconduct; in response, the putative Receiver asserted that he—not the actual directors of the company—spoke for the company and controlled its litigation decisions. The Third Circuit summarily rejected that position, describing it as an “unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state [or country], and a radical intrusion into the province of a co-equal sovereign” that could not withstand constitutional scrutiny. *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432, 447 (3d Cir. 2025).

The list could go on—there are over two dozen of these “receiverships” that have arisen from the Asbestos Docket—but the point is obvious: This is not “economic stability.” It is the opposite.

* * * * *

The Court should disregard New Indy’s brief. It is not a neutral “friend of the court” brief. It is an “undisclosed friend of the putative Receiver” brief, advancing arguments that ignore constitutional limits, statutory boundaries, and settled corporate-law principles. The talking points it offers add nothing of legal value to this appeal.

Respectfully submitted,

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February 17, 2026