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S.C. SUPREME COURT

March 26, 2026

**Via Electronic Filing**

The Honorable Patricia A. Howard  
Clerk of the South Carolina Supreme Court  
supctfilings@sccourts.org

Re: *Tibbs v. Asbestos Corporation Ltd.*  
Appellate Case No. 2025-002104  
Notice of Additional Proceedings and Supplemental Authorities

Dear Ms. Howard:

We write to provide the Court with notice of two matters that are responsive to issues raised during the February 25, 2026 oral argument in this matter, as well as to provide supplemental authorities responsive to those same issues. Rule 207(b)(7), SCACR.

**I. Additional Proceedings in the Asbestos Docket: *Ross v. Ascend Performance Materials***

Approximately 11 minutes into the oral argument, Justice Hill inquired about whether the whole of a foreign company can be “in receivership” by virtue of an order from a South Carolina circuit court. The South Carolina Code expressly rejects such a notion: South Carolina Code §§ 15-65-10(4) (only “property within this State of foreign corporations” is eligible for a receivership order), 15-65-10(5) (the catch-all provision is limited by all other provisions of South Carolina law), 15-65-20 (“receiver of the property”), 15-65-30 (“the party whose property is sought”), 15-65-50 (“receiver of the property”), 15-65-60 (“redelivery of the property”), 15-65-60 (“appointed of any property”), 15-65-100 (“receivers of the property”), all make clear that a Title 15 receivership is only about “property,” not companies. Likewise, South Carolina Code § 33-1-400(4) excludes “foreign corporations” from the definition of “corporation” for purposes of the South Carolina Business Corporation Act, rendering “foreign corporations” ineligible for a Title 33 receivership or custodianship.

Additionally, the Third Circuit’s decision in *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432 (3d Cir. 2025), directly rejects this concept on Due Process and Commerce Clause grounds. *See generally* Joint Response to Mr. Ashmore’s Amicus Brief

*passim* (filed Feb. 23, 2026) (the U.S. Constitution prohibits states from reaching beyond their borders); Joint Response to the Asbestos Victims’ Amicus Brief *passim* (filed Feb. 23, 2026) (surveying South Carolina receivership cases and confirming that nothing at all in the State’s jurisprudence supports this putative receivership).

Along with lacking any legal authority, additional activity has happened in the Asbestos Docket that proves several of the Appellants’ core points. Consider *Ross v. Ascend Performance Materials Operations, LLC*, Case No. 2024-CP-40-03710 (Asbestos Docket).

In *Ross*, the plaintiffs (represented by the same counsel as the *Tibbs* and *Park* plaintiffs) sued over 70 defendants in an asbestos personal injury case. No “Cape” defendant was included. The case was set for trial on September 22, 2025. (Docketing Order (July 31, 2024).) Three days before trial was to begin, the case was continued at the request of the single remaining defendant—Piedmont Insulation, Inc., which is a North Carolina company that this same putative Receiver claims to control. (Order of Continuance (Sept. 19, 2025).)

Within a month of the continuance, the putative Receiver announced a “settlement agreement” with the DeBeers/Oppenheimer Defendants in *Tibbs* through which the putative Receiver would pay out “claims” against Cape Intermediate Holdings Limited despite that company not being a party to *Tibbs*.

The *Ross* plaintiffs then promptly moved to amend their complaint to add Cape Intermediate Holdings Limited as a new defendant in *Ross*, which the circuit court granted two days later (motion filed October 27, 2025; order granting motion filed October 29, 2025). The *Ross* plaintiffs then:

- (1) filed an amended summons and complaint that named Cape Intermediate Holdings Limited as a defendant (October 29, 2025 docket entry, copy attached);
- (2) filed alleged proof of service of the summons and pleading on Cape Intermediate Holdings Limited (November 4, 2025 docket entry); and
- (3) filed a motion for default against Cape Intermediate Holdings Limited (December 9, 2025 docket entry), which the circuit court granted the next day (December 10, 2025 docket entry), and which is now the subject of further proceedings below (copy of hearing notice attached).

The Altrad and Charter Appellants became aware of the pursuit of a default judgment in *Ross* after oral argument when counsel for the *Ross* plaintiffs copied them on an email to the circuit court about that case. This activity in *Ross* underscores the impropriety of all proceedings in *Tibbs*:

- In *Ross*, the plaintiffs have named CIHL as an actual defendant; that has ***never happened*** in *Tibbs*.

- In *Ross*, the plaintiffs claim to have attempted to serve CIHL itself as an actual defendant; that has *never happened* in *Tibbs*.
- In *Ross*, the plaintiffs have not alleged that CIHL is “in receivership,” nor have they alleged anything at all about the existence of a receivership order involving CIHL. The putative Receiver is not a party to *Ross* (neither are the Appellants).
- In *Ross*, the plaintiffs allege that CIHL has been known by certain “alternate” names through time, but they do not allege that “Cape PLC”—the entity identified in the *Park* appointment order and the only “Cape” entity that is a defendant in *Tibbs*—is one of those “alternate” names. (Attachment, *Ross* Second Am. Compl. ¶ 16.) *See also Porter v. Brown*, 149 S.C. 151, 158, 161–62 (1929) (receivership order is a nullity as a matter of law if it does not identify the correct entity whose property is to be the subject of the order).
- In *Ross*, the plaintiffs are actively attempting to secure a default judgment against CIHL despite the same counsel disclaiming any interest in doing so in response to questions from Justice Few approximately 63 minutes into oral argument. The disinterest in obtaining a default judgment against CIHL was cited during oral argument as the justification for seeking a “receivership.”

The litigation activity in *Ross* is entirely inconsistent with the plaintiffs’ and putative Receiver’s representations to this Court in *Tibbs*. And the *Ross* litigation activity confirms at least two core points underlying the Altrad and Charter Appellants’ arguments to this Court: Cape Intermediate Holdings Limited is not now and never has been a party to *Tibbs*, nor has it been served with anything at all in *Tibbs*. Thus, the circuit court lacked jurisdiction for everything below, including the order on appeal that purportedly created the receivership involving Cape Intermediate Holdings Limited in the *Tibbs* case.

Accordingly, Due Process demands vacating everything in *Tibbs* involving this putative receivership and dismissing this case for lack of jurisdiction, just as the Altrad and Charter Appellants have argued throughout these proceedings.

## **II. Additional French Proceedings**

In *Altrad Investment Authority SAS v. Protopapas* [2025] EWHC 2470 (Ch) (“*Smith*”), the English High Court affirmed the validity and enforceability of the release executed between the executives of Cape Intermediate Holdings Ltd. (English company) and Cape PLC (Jersey company), on the one hand; and Altrad Investment Authority (French company), Mr. Altrad (French individual), and several others companies, on the other. A copy of that decision, to which Mr. Protopapas was a party and properly served, begins on Page 2937 of the Record. A copy of the release begins on Page 2976 of the Record.

As the Court is aware, the Altrad Parties have commenced exequatur proceedings in France regarding the English High Court's ruling in *Smith*. Mr. Protopapas is a party and has been properly served in those French proceedings as well.

On March 12, 2026, the French Court was scheduled to conduct its review of the request for exequatur of the English High Court's *Smith* decision. That review is part of the French court's process for ensuring that the due-process requirements for recognition of *Smith* have been satisfied before determining whether to grant exequatur (*i.e.*, recognition and enforceability) of that decision in France.

As the Court is aware, a prior decision involving Mr. Protopapas has already been recognized by the French courts, but only after confirming that the prior court was one of competent jurisdiction, that the prior order confirmed with international public policy, and that there was no fraud involved in the prior order. A copy of that prior exequatur decision begins on Page 2923 of the Record. These same due-process safeguards will no doubt be followed in the current French exequatur proceedings.

Importantly, *Smith* is consistent with the principle discussed during oral argument—particularly in response to Justice Hill's questions approximately 22 minutes into the argument—that a corporation's litigation decisions are controlled by its directors rather than an out-of-jurisdiction receiver.

In addition to *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640 (2025), and *Montgomery & Crawford, Inc. v. Arcadia Mills*, 173 S.C. 464 (1934), which were cited at oral argument, the following authorities make clear that only the directors, and not a putative receiver, control corporate decision-making, including litigation decisions:

- *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432 (3d Cir. 2025) (rejecting this specific receiver's attempt to override the decision of a board of New Jersey company to commence bankruptcy proceedings, and concluding that interference with litigation decisions by a receiver appointed by a South Carolina circuit court would violate the Due Process and Commerce Clauses); and
- S.C. Code Ann. §§ 33-8-101 (all "corporate powers" must be exercised and controlled by directors alone) and 33-3-102 (corporate powers include "sue and be sued, complain, and defend in its corporate name," and "make contracts").

We will provide further updates on the current French exequatur proceedings as they arise.

Best regards,

/s/ M. Todd Carroll  
*Counsel for the Altrad Appellants*

/s/ A. Victor Rawl, Jr.  
Gordon Rees Scully Mansukhani, LLP  
*Counsel for the Charter Appellants, joining Part I*

cc: All Counsel of Record

Attachments: *Ross* Second Amended Complaint and *Ross* Notice of April 20, 2026 Hearing