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S.C. SUPREME COURT

April 30, 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
Second Notice of Supplemental Authority

Dear Ms. Howard:

Pursuant to Rule 208(b)(7), SCACR, the Altrad Appellants respectfully provide the Court notice of supplemental authority relevant to issues presented throughout the briefing.

- *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, Op. No. 25-1044 (3d Cir. Apr. 27, 2026).

This case deals with a purported receivership appointment arising from the South Carolina Asbestos Docket involving a New Jersey company. The Altrad Appellants cited a prior opinion from the Third Circuit in the *Protopapas* matter on Pages 34 and 49–50 of their initial brief (filed Dec. 10, 2025); Pages 2, 9, and 13 of their reply brief (filed Jan. 6, 2026); Pages 2–4 of their response to the Plaintiffs' Law Firms' amicus brief (filed Feb. 9, 2026); Page 4 of their response to the New Indy amicus brief (filed Feb. 17, 2026); Page 5 of their response to the so-called "Downstream Defendants'" amicus brief (filed Feb. 19, 2026); and Page 2 of their response to Mr. Ashmore's amicus brief as a federal receiver (filed Feb. 23, 2026).

The Third Circuit's prior opinion was reported at 152 F.4th 432 (3d Cir. 2025). Earlier this week, in response to petitions for rehearing, the Third Circuit issued a superseding precedential opinion. In the new opinion, the Third Circuit reiterated all of the same points for which the Altrad Appellants cited the prior opinion—namely, a South Carolina circuit court cannot constitutionally appoint a receiver over an out-of-state company, and Judge Toal could not lawfully divest a foreign company's directors of their authority—but it modified some of the verbiage quoted in the Altrad Appellants' briefs.

Accordingly, the Altrad Appellants respectfully enclose a copy of the Third Circuit's new opinion so that the Court can read the new opinion in full, as it reinforces the unconstitutionality of the activity below in this appeal, and they specifically refer the Court to the following passages that modify some of the prior opinion's quotes that the Altrad Appellants highlighted in their briefs to this Court:

Slip Op. at 28 (internal citations omitted, and ellipsis in original): "Indeed, the Constitution has a great deal to say about the relations between states, their authority to decide the rights of foreign parties, and the application of their laws in instances of conflict. For instance, courts have long construed the Due Process Clause of the Fourteenth Amendment to impose limitations on state courts' authority to determine non-resident parties' rights. Likewise, the dormant Commerce Clause prohibits, among other things, 'the enforcement of state law "driven by . . . economic protectionism—that is, regulatory measure designed to benefit in-state economic interests by burdening out-of-state competitors."' It is no surprise that the Constitution places limits on the authority a state court can exercise over companies that are incorporated in a sister state. Those limitations are as intuitive as they are sensible."

Slip Op. at 29 (internal citations omitted): "Thus, when it comes to control over corporate decision-making, a state 'has no interest in regulating the internal affairs of foreign corporations.'"

Finally, Page 53 of the Slip Opinion concludes as a constitutional matter: "The South Carolina Court could not unilaterally divest Whittaker's board of that authority [to make litigation decisions, including to commence bankruptcy proceedings], and, once appointed, the South Carolina Receiver had to convince a New Jersey court to displace the board." Here, the only court with jurisdiction to authorize the putative Receiver to "displace the board" of any "Cape" entity is the High Court of Justice for England and Wales—which has specifically refused to do so. A copy of that order begins at Record Page 2769.

- *In re Asbestos Corp. Ltd.*, Case No. 25-10934 (MG) (Bankr. S.D.N.Y. Apr. 29, 2026).

ACL is a Canadian company that filed for bankruptcy protection following the South Carolian Asbestos Court's appointment of a putative receiver. For reference, a copy of the Canadian court's order approving ACL's bankruptcy filing is included in the appellate record at Page 3013. The U.S. Bankruptcy Court for the Southern District of New York's recognition of those foreign proceedings is reported at *In re Asbestos Corp.*, 674 B.R. 855 (Bankr. S.D.N.Y. 2025).

On April 21, 2026, the circuit court issued its "Amended Tenth Report to the Supreme Court of South Carolina," in which the circuit court reported about its efforts to require ACL and its insurers to pay settlements to South Carolina asbestos plaintiffs in two cases: *Berley* and *Jenkins*.

On April 29, 2026, the United States Bankruptcy Court for the Southern District of New York issued the enclosed Order Restating and Enforcing the Bankruptcy Stay. In that order, the federal court expressly stated that "[a]ny further activity in the *Berley* or *Jenkins* proceedings, including the issuance or enforcement of any order directing any payment to claimants in connection with those proceedings, or the making of any such payment, is a violation of the Bankruptcy Stay," while also reserving judgment on what to do with a specific sum placed in trust with a law firm. (Slip. Op. at 2, ¶(C).)

That order also expressly stated: "The insurance assets of the Debtor, to the extent located within the territorial jurisdiction of the United States are subject to the jurisdiction of this Court, and the exclusive control and administration of the Foreign Representative, on behalf of the Debtor. Any action by any person or any court to obtain possession of, or to exercise control over such assets, is a violation of the Bankruptcy Stay." (*Id.* at 2–3, ¶(D).)

These passages are relevant to the arguments raised throughout the Altrad Appellants' briefings regarding the South Carolina circuit court's lack of lawful authority to use the receivership statutes of Title 15 of the South Carolina Code to seize control of a foreign corporation or to seize assets of a foreign corporation.

Also related to the ACL bankruptcy and the matters discussed in the Bankruptcy Court's order, the circuit court concluded its recently-filed Amended Tenth Report to this Court by stating: "These are the kinds of troubling matters that have surrounded settlement issues regarding the Cape/ACL entities and their insurers." To the extent that statement suggests a relationship or common identity between ACL and "Cape," it appears to reflect a misunderstanding or imprecision in terminology.

To ensure no confusion: ACL and "Cape" are distinct and unrelated entities. "Cape" itself is not a defined term in the circuit court's Amended Tenth Report. The circuit court may have intended to reference either the Jersey company Cape plc—which was never served in this action—or the English company Cape Intermediate Holdings Limited—which was also never served and, as emphasized time and again, is not even named as a party in this case. In either event, neither entity bears any relationship to ACL. And, as discussed at length during oral argument in this appeal, insurance has never been part of this case.

Best regards,

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

Enclosures—Copies of New Decisions

cc: All Counsel of Record
Filed in Circuit Court