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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs,... Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton 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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation 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,

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; ArranCo US, LLC; Hawk Bidco US Inc.; Sparrows Offshore, LLC; Angle American PLC; De Beers PLC; De Beers Centenary AG; De Beers Consolidated Mines Proprietary Ltd.; De Beers UK Ltd.; ESAB Corporation; Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd. are the .... Appellants.

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INTRODUCTION

This appeal addresses the circuit court's unlawful expansion of South Carolina's receivership statute beyond the outer limits imposed by South Carolina law and the United States Constitution. This case represents the latest chapter in the gradual and unlawful creep of the receivership statute in dozens of asbestos cases—starting with receiverships over dissolved South Carolina companies, expanding to dissolved foreign companies, and now purporting to seize total control of active foreign companies with no assets in South Carolina.[1] The receivership in this case must be dissolved because a South Carolina court has no authority to appoint a receiver over an active foreign company with no assets in this State for the purpose of suing other foreign companies and individuals and seizing their foreign assets.

Under the circuit court's incorrect interpretation of the South Carolina receivership statute, it has universal jurisdiction to appoint receivers with plenary power over active foreign companies located anywhere in the world, without regard to whether those companies have any assets in or connection to South Carolina. The Receiver purports to exercise *in personam* control over the foreign company itself, not just *in rem* control over its (nonexistent) assets located in this State. The Receiver then purports to have a roving license to sue other foreign companies and individuals located anywhere in the world, asserting meritless "alter ego," "veil piercing," and other equitable claims, to extract the targets' *foreign* assets and bring them *into* South Carolina. This is so far beyond the traditional and limited role of state court receiverships—to marshal domestic (*i.e.*, South Carolina) assets to pay domestic creditors (of which there are none here)—that it is unprecedented and alien to the jurisprudence of South Carolina or anywhere else.

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[1] Appendix, Table 1: Receivership Appointments from the Asbestos Docket, and Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket.

The circuit court's limitless interpretation turns South Carolina's receivership statute on its head, which on its face only allows a receivership over the *domestic* assets of a *defunct* foreign company *that is dissolved, insolvent, or has forfeited its corporate rights*. S.C. Code Ann. § 15-65-10(4). None of the entities in receivership meet these criteria, and none of the foreign individuals or companies sued by the Receiver have any assets in or connection to South Carolina. While the Receiver claims that his takeover of an active foreign company is "in accordance with existing practice," *id.* § 15-65-10(5), with the exception of the single circuit judge below, no South Carolina court has ever done this before. And for good reason—South Carolina law and the United States Constitution forbid it.

This appeal arises from an order not only refusing to dissolve an unlawful receivership, but instead continuing and modifying the receivership to seemingly create a new receivership appointment over yet another active foreign company with no assets in South Carolina and without any notice of these proceedings. *See id.* § 14-3-330(4) (granting appellate jurisdiction over interlocutory orders "granting, continuing, modifying, or refusing the appointment of a receiver").

The circuit court originally granted a receivership in the *Park v. Armstrong International Inc.* lawsuit over Cape PLC, an active foreign company incorporated in the Bailiwick of Jersey in 2011. Cape PLC has no assets in South Carolina, no involvement in any of the historical asbestos-related activities that form the basis of the present *Tibbs* lawsuit (or the *Park* lawsuit in which the receivership originated, for that matter), no contacts with this state sufficient to establish personal jurisdiction in South Carolina, and was never served with anything in the *Park* case. But even though both the motion seeking the receivership and the order creating the receivership in the *Park* lawsuit purported to put Cape PLC into receivership, the appealed order in this case purported to modify the receivership to apply to an entirely different, active foreign company—Cape

Intermediate Holdings Limited ("CIHL")—which was incorporated in the United Kingdom in 1893, and which was never referenced in either the motion or the order creating this receivership in the first place. Like Cape PLC, CIHL has no assets in South Carolina, and South Carolina courts have no personal jurisdiction over it either.

The challenged order raises several issues regarding whether the circuit court's continuance and modification of this unprecedented receivership is consistent with South Carolina and federal law. It is not, and the order below should be vacated and the purported receivership dissolved.

STATEMENT OF ISSUES

This appeal presents the following issues for the Court's consideration:

I. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate substantive requirements in the South Carolina statute governing receiverships?

II. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate the U.S. Constitution and federal law?

III. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate procedural requirements in the South Carolina statute governing receiverships?

STATEMENT OF THE CASE

The receivership at issue originated in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. There, an asbestos plaintiff named both Cape PLC and CIHL as defendants within a sea of asbestos defendants. (R. p. ___; *Park* Sec. Am. Compl.) Mr. Park alleged that each of these entities is a presently-operating company organized under the laws of the United Kingdom with its principal place of business in England. Publicly available information shows that Mr. Park was incorrect, as Cape PLC is a Jersey company that was created in 2011. (R. p. ___; Jersey Financial Services Commission Registry for Cape PLC.) Regardless, there are no other allegations specific to either of these entities anywhere else in that or any other pleading filed in *Park*.

The circuit court ordered *Park* to begin trial on June 20, 2022. (R. p. ___; Docketing Order at 2 (filed Dec. 1, 2021, in *Park*).) On June 3, 2022, Mr. Park's counsel reported to the Court that the case was "fully resolved." (R. p. ___; Email from Ms. McVey to 479 recipients (June 3, 2022).) Other than stipulations of dismissal being filed, the case was over, and no damages or liability were ever attributed to Cape PLC or CIHL. There was no motion for entry of default or default judgment entered against either Cape PLC or CIHL in the *Park* lawsuit.

But nine months later, without a live case or controversy pending, counsel for Mr. Park—whose case was already "fully resolved"—filed a 130-page motion with exhibits to have the Court appoint a receiver over "Cape PLC and its subsidiaries, affiliates, successors, and assigns," a group that is undefined in the motion. (R. p. ___; Mot. to Appoint Receiver at 1 (filed Mar. 6, 2023, in *Park*).) In its motion to appoint receiver, Mr. Park's counsel incorrectly stated that Cape PLC was served with the *Park* Second Amended Summons on March 8, 2022 via the Hague Convention, and cited to an Exhibit A that did not exist on the Court's docket.

On March 17, 2023, the Court granted that motion without a hearing, explaining:

> This Court finds that the application [to appoint Mr. Protopapas as receiver] is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company') have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

(R. p. ___; Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*).)

The appointment order was sweeping and not limited to marshaling South Carolina assets, stating that the Receiver has "the power and authority to fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be." (*Id.*) The order also purported to give the Receiver power to

"collect all accounts receivable of Respondent and all rents due," to "endorse and cash all checks and negotiable instruments payable to Respondent," and even to "sell any real property . . . belonging to Respondents," all without regard to where these assets are located. (*Id.*) To be sure, the appointment order reads as if it was appointing a custodian to run the daily affairs of Cape PLC, rather than a receiver of its (nonexistent) domestic assets, even though South Carolina law does not allow a court to appoint a custodian over foreign companies. *See* S.C. Code Ann. §§ 33-14-320(a) & (c)(2) (authorizing the circuit court to appoint a custodian to "exercise all of the powers" of domestic corporations only).

Three months later, Mr. Protopapas, in his supposed capacity as the receiver for "Cape PLC," filed a third-party complaint in *Tibbs v. 3M Company*, Case No. 2023-CP-40-01759. But rather than plead a case whereby Cape PLC attempts to shift derivative liability to a third-party defendant—which is the only permissible use of third-party practice recognized by Rule 14, SCRCP, and which would make no sense here, as Cape PLC has no predicate liability and has never had any—the Receiver alleged that he is a crusader against dozens of companies that he contends have shielded Cape PLC from having liability, trumpeting that his pleading "begins their reckoning." (R. p. ___; Third-Party Compl. at "Introductory Statement" (June 30, 2023).) In other words, rather than "protect the interests" of Cape PLC as is his obligation, the Receiver is instead attempting to manufacture liability against Cape PLC and the other named third-party defendants in *Tibbs*.

Faced with claims asserted by a Receiver who had no authority to act under state or federal law, Mr. Altrad and AIA immediately filed a motion to dismiss for lack of personal jurisdiction, and a conditional motion to dissolve the receivership and motion to dismiss under Rules 12 and 14, SCRCP, both of which were subject to their personal jurisdiction objections. While the Receiver could do nothing to fix the substantive defects in his appointment, his opposition to the motion to dissolve made a series of incorrect or misleading statements in an effort to cover up the procedural defects.

First, when presented with undeniable proof that Cape PLC had never been served with ***anything*** in the *Park* case, the Receiver attempted to conflate Cape PLC with CIHL by liberally using the "n/k/a" or "now known as" acronym that appears nowhere in the *Park* pleadings, in the motion to appoint the receiver, or the order appointing the receiver. And the "n/k/a" label is nowhere to be found in *Park* for an obvious reason: Cape PLC is a standalone Jersey entity that was created in 2011. What's more, even though CIHL was separately named as a defendant in *Park*, it was not mentioned in the motion or the order appointing a receiver over Cape PLC. (R. p. ___.)

Stunningly, despite the admitted separateness of these two entities and the total absence of CIHL from any of the filings that created this receivership, the Receiver argued that the circuit court could swap the name CIHL for Cape PLC and retroactively rewrite the original appointment order from *Park* in this case. He made this argument despite conceding every material point that rebuts it:

1. Cape PLC is not the same entity as CIHL.[2]

2. Cape PLC—the Jersey entity that is the subject of the receivership order—was never served with any pleading or the motion to appoint the receiver in *Park*.[3]

3. Neither the motion to appoint nor the order appointing the Receiver in *Park* made any reference whatsoever to CIHL, and never used the n/k/a acronym that the Receiver misleadingly used throughout his opposition to the motion to dissolve.[4]

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[2] (*See* R. p. ___; Opp. at 3 (conceding that in the *Park* case, Plaintiffs attempted to add Cape Intermediate Holdings Limited "as a defendant, apart from Cape PLC").)

[3] (*See* R. p. ___; *id.* at 10 (conceding that "there has been **no** reference to the Jersey entity" in "the underlying *Park* and *Tibbs* Lawsuits, and in this third-party action," and "the conduct of the 130-year-old Cape entity in England (and not the recently formed holding company in the Bailiwick of Jersey) is at issue") (emphasis in original).)

[4] (*See* R. p. ___; *id.* at 20 n.15 (proposing the Court's "amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd.," thus conceding that Cape Intermediate Holdings Limited is not identified at all in the current order).)

4. The *Park* Plaintiffs represented to the Court in June 2022 that the case was "fully resolved," nine months before the Court purported to appoint a receiver over Cape PLC.[5]

5. Neither Cape PLC nor CIHL ever defaulted, nor was any default judgment entered against either company: not in *Park*, and not in any other case in South Carolina.[6]

6. Cape PLC has no assets in South Carolina.[7]

Despite these concessions, the circuit court denied the motion to dissolve the receivership and modified the original receivership appointment to seemingly include CIHL despite the absence of any notice to that foreign company at all of the Receiver's arguments or the potential appointment of a receiver over its assets. (R. p. ___; Order (Dec. 6, 2023).) ***Standing alone,*** this should result in dismissal of the entire Third-Party Complaint, as Mr. Tibbs has not brought any claims against CIHL, meaning that a receiver over CIHL has no possible liability to impute to third-party defendants. Rule 14, SCRCP.

Additionally, the circuit court held that it had personal jurisdiction over the Altrad Defendants (and all of the other third-party defendants) at the Receiver's request despite the absence of any material allegations against either Mr. Altrad or AIA in the Receiver's pleadings; despite the fact that neither of the Altrad Defendants have any connection whatsoever to South Carolina; and despite the fact that neither of the Altrad Defendants had anything to do with Cape PLC or CIHL until 2017, long after anything happened that could possibly give rise to any liability to any asbestos plaintiff in South Carolina or anywhere else. (R. p. ___; Order (Dec. 6, 2023).)

The only basis for the circuit court's personal jurisdiction ruling were alleged connections between Mr. Altrad and AIA, on the one hand, and Cape PLC or CIHL, on the other, which were

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[5] (*See* R. p. ___; *id.* (conceding the validity of Ms. Park's counsel's message to the Court).)

[6] (*See* R. p. ___; *id.* at 18 (conceding there is "no entry of a default against Cape PLC or a judgment reflecting a liquidated sum due to the *Park* Plaintiffs").)

[7] (*See* R. p. ___; *id.* at 18–19 (conceding that Cape PLC "lacks assets in South Carolina").)

grounded in nothing other than a "self-piercing" claim alleged by the Receiver himself. Such a baseless ruling simply cannot pass any type of appellate scrutiny.

The circuit court entered the order on appeal on December 6, 2023. This appeal timely followed on December 18, 2023, and the order should be vacated in full as it runs directly contrary to long-established South Carolina and constitutional law.

SUMMARY OF ARGUMENT

This Court should reverse the order denying the motion to dissolve the receivership because the circuit court's order is replete with errors. Those errors include:

South Carolina Law Prohibits the Creation of this Receivership. The circuit court had no statutory basis under South Carolina law to continue and modify the receivership over Cape PLC (or CIHL, for that matter). The circuit court disclaimed reliance on South Carolina Code § 15-65-10(4), notwithstanding the fact that both it and the *Park* Plaintiffs expressly relied on the statute in the original *Park* appointment order.

Section (4) is facially inapplicable because neither Cape PLC nor CIHL has any assets in South Carolina; neither is dissolved, insolvent, or in imminent danger of insolvency; and neither's corporate rights have been forfeited in South Carolina or any other jurisdiction. Section (4) only allows for *in rem* jurisdiction over the *property* of a foreign company located within South Carolina, not *in personam* jurisdiction over all affairs of the foreign company generally.

That leaves only South Carolina Code § 15-65-10(5), which does not authorize the receivership here because the appointment of a receiver over an active foreign company with no assets in South Carolina is not consistent with "existing practice" in South Carolina or anywhere else. The circuit court cannot rely on the "existing practice" provision of Section (5) to obtain a receivership over a foreign company that directly conflicts with Section (4)'s express limitations.

Federal Law Prohibits the Creation of this Receivership. The strict statutory limits on state court receiverships over foreign companies found in South Carolina Code § 15-65-10 has federal constitutional underpinnings. The present purported receivership over Cape PLC or CIHL exceeds those statutory limits and therefore violates federal law.

First, the limitation of the scope of the receivership to the South Carolina property of foreign corporations is compelled by the dormant and foreign Commerce Clauses of the U.S. Constitution, which prohibit state courts from exercising extraterritorial jurisdiction over foreign companies, foreign individuals, and foreign assets located outside of the State.

Second, Section (4) only allows the creation of a receivership over "the property within this State of foreign corporations," not over the foreign corporation itself. This limitation implicates the circuit court's personal jurisdiction over the foreign entities targeted by the Receiver. The receivership must be dissolved because the circuit court has no personal jurisdiction over foreign targets of the Receiver's third-party complaint—Mr. Altrad or AIA.

Finally, allowing a state court to seize control over an active foreign company to assert alter ego and veil piercing claims against other foreign companies and individuals violates the Takings, Due Process, Equal Protection, and Excessive Fines Clauses, both as to the entity in receivership (whether Cape PLC or CIHL) and the third-party defendants targeted by the Receiver.

The Appointment Failed to Give Proper Notice. The receivership also must be dissolved because neither Cape PLC nor CIHL was given proper notice of the application for appointment of the receiver as required by South Carolina Code § 15-65-20. The failure to identify CIHL as the purported receivership target in the motion to appoint the receiver and the order appointing the Receiver is an incurable defect.

STANDARD OF REVIEW

The proper interpretation of a statute is a question of law, which this Court reviews d*e novo* and "without any deference to the court below." *Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021).

Likewise, to the extent the Court determines that any aspect of this appeal is subject to the abuse-of-discretion standard of review, a legal error or a factual conclusion lacking evidentiary support amounts to an abuse of discretion. *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023).

ARGUMENT

This Court should reverse the appealed order continuing and modifying a receivership over Cape PLC and creating a receivership over CIHL because neither South Carolina nor federal law authorizes the creation of a receivership over an active foreign corporation with no assets in South Carolina. The circuit court's order is replete with errors of law, and, respectfully, it reflects basic misunderstandings of receiverships and the scope of the circuit court's limited jurisdiction.

The United States Supreme Court limits the territorial authority of a receiver to the property within the state in which he or she is appointed. *Booth v. Clark*, 58 U.S. 322, 331 (1854). So does the South Carolina Supreme Court. *See Pollock v. B. & L. Ass'n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) ("The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.").

Recognizing this limitation, the General Assembly limited the creation of receiverships over foreign companies to <u>property</u> located within South Carolina. *See* S.C. Code Ann. § 15-65-10(4) (limiting receiverships to "property within this State of foreign corporations"). In other words, the maximum scope of a foreign receivership in South Carolina is *in rem* (over the domestic

assets of the foreign corporation), not *in personam* (over the corporate person of a foreign corporation). The corollary to this limitation is that any action by a receiver is limited to marshaling domestic assets in South Carolina, not suing foreign third parties (on behalf of foreign Cape PLC or foreign CIHL) to bring their foreign assets into this State.

This distinction is critical to assessing this appeal. South Carolina has no statutory vehicle for a circuit court to exercise *in personam* control over the person and affairs of a foreign corporation. Notably, South Carolina Code § 33-14-320 allows for appointment of a custodian, with the power to manage the affairs of an active business, in a judicial proceeding to dissolve a domestic corporation. But that provision applies exclusively to South Carolina corporations because South Carolina corporations, unlike foreign entities, are created by the State and are within the State's jurisdiction. *See* S.C. Code Ann. § 33-1-400(4) (defining "corporation" for purposes of Chapter 14 of Title 33 as "a corporation for profit, *which is not a foreign corporation*") (emphasis added).

But a custodian is fundamentally different than a receiver, as this Court has recognized: "A receiver's duty is to wind up and liquidate the business and affairs of a corporation, while custodians manage the affairs of the corporation." *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 86 (Ct. App. 2004). In the limited context of dissolving a domestic corporation, the "court appointing a receiver or custodian has exclusive jurisdiction over the corporation *and all of its property wherever located*." S.C. Code § 33-14-320(a) (emphasis added).

There is absolutely no authority—statutory or otherwise—for the circuit court to appoint a custodian over an active foreign company. Accordingly, the circuit court here relied on the much more limited receivership provisions of Title 15, but it invoked Section 15-65-10 to effectively

appoint a custodian over Cape PLC (or, subsequently, CIHL) to manage the affairs of an active foreign company. That statute does not allow for *any* form of custodianship over a foreign corporation, and its allowance for a receivership is limited to the assets of a defunct foreign company located within South Carolina. Unlike Section 33-14-320(a), there is no provision of Section 15-65-10 stating that receiverships over a foreign corporation extend to "all of its property wherever located." The reason why there is no such thing as a custodianship over a foreign corporation and its worldwide assets is simple—it would be unconstitutional. Yet that is exactly what the receivership order on appeal purported to create.

South Carolina Code § 15-65-10 identifies the limited circumstances under which a court can consider appointing a receiver. The original appointment order cited Sections (4) and (5) of this statute when originally appointing Mr. Protopapas as receiver over Cape PLC, but the circuit court below abandoned Section (4) and relied exclusively on Section (5) when modifying the receivership to apply to CIHL. These sections allow a receivership appointment to marshal property within the State of South Carolina in the following limited circumstances:

> (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
>
> (5) In such other cases as are provided by law or may in accordance with the existing practice, except as otherwise provided in this Code.

This situation meets none of these conditions.

As to Section (4), neither Cape PLC nor CIHL is dissolved, neither is insolvent, and neither has any property in South Carolina. Unable to dispute those points, the Receiver previously argued that appointment under Section (4) is proper because Cape PLC or CIHL has "forfeited its corporate rights" based on the unadjudicated allegations of wrongdoing in the Receiver's own Third-Party Complaint. Not so.

The statutory reference to "forfeiture" is a term of art that refers to a forfeiture action against a domestic corporation resulting in a final forfeiture judgment by a South Carolina court pursuant to established South Carolina law. *See, e.g.*, S.C. Code Ann. § 39-3-20 (authorizing the Attorney General to "begin an action against such *domestic* corporation to forfeit its charter" for certain antitrust violations) (emphasis added). Here, the Receiver argued a nonexistent "forfeiture" over a foreign company, based on the incorrect and unadjudicated allegations in the motion to appoint the Receiver, and citation to Black's Law Dictionary. A plaintiff cannot simply cite his own unproven allegations of wrongdoing to trigger the "forfeiture" clause of Section (4)—that would make a prejudgment receivership available in every case. Additionally, even assuming that the reference to "forfeiture" in Section (4) can be read to include final forfeiture judgments imposed under the laws of foreign states or nations, the Receiver has identified no such foreign judgment forfeiting the corporate rights of Cape PLC or CIHL in Jersey or the U.K., respectively. There are none.

Even the circuit court recognized the error of the Receiver's position, as it abandoned any reliance on Section (4) in its order continuing and modifying this receivership. (*See* Order at 23–25 & n.16 (Dec. 6, 2023) (attempting to justify the receivership under Section (5) and conceding that "the Order appointing the Receiver incorrectly described Cape as 'dissolved,' even though Cape is still a going concern in the United Kingdom [sic: Bailiwick of Jersey]").)

Left without Section (4), the circuit court relied exclusively on Section (5) to justify this receivership, finding that appointing a receiver to control all property of an active foreign company was "in accordance with the existing practice." (*Id.*) There is not one South Carolina case appointing a receiver in circumstances remotely similar to those presented here. Every old case cited by the Receiver or relied on by the circuit court involved receiverships over domestic parties

and property in South Carolina. The circuit court's now-exclusive reliance on Section (5) to justify extension of the receivership to Cape PLC or CIHL is improper because it interprets Section (5) to allow an *in personam* receivership over an active foreign company that Section (4) expressly forbids.

This contention violates the basic canon of statutory construction that one provision of a statute cannot be interpreted in a manner that renders another meaningless, and it ignores the qualifying clause in Section (5) stating "existing practice" can support the creation of receiverships "except as otherwise provided in this Code." The circuit court's misconstruction of Section (5) resulted in a series of legal errors that require reversal and vacating the receivership.

I. The receivership appointment violates the substantive requirements of the South Carolina statute governing receiverships.

A. The receivership appointment is not consistent with any "existing practice."

The circuit court erred in relying on South Carolina Code § 15-65-10(5) to continue and modify the receivership over Cape PLC or CIHL because the creation of a receivership over an active foreign entity with no assets in South Carolina is not "in accordance with the existing practice" in South Carolina, and reliance on Section (5) to create this receivership renders the limitations of Section (4) a nullity and ignores the "except as otherwise provided in this Code" qualifying language of Section (5). *See State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.").

Section 15-65-10(5) provides that the circuit court may appoint a receiver "[i]n such other cases as are provided by law or may be in accordance with the existing practice, *except as otherwise provided in this Code*." S.C. Code Ann. § 15-65-10(5) (emphasis added). As explained above, Section (4) prohibits the creation of a receivership over an active foreign company without

any property in South Carolina, so the "except as otherwise" clause prohibits the Receiver and the circuit court from evading those limitations through reliance on Section (5). *See S.C. DOR v. Anonymous Co. A*, 401 S.C. 513, 519, 678 S.E.2d 255, 258 (2009) (agreeing that "[t]here is nothing to indicate an intent that this catch-all phrase was intended to alter the status of any of the specifically listed entities" in the same statute).

Even setting aside the obvious conflict with Section (4), this receivership is not in accordance with "existing practice." There are no published cases in South Carolina that have affirmed the appointment of a receiver with plenary authority over an active foreign company with no assets in this state. On the other hand, there are cases in which appellate courts reversed such an improper appointment of a receiver. *See, e.g.*, *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver over a foreign corporation because "there [wa]s a total failure of any proof that it ha[d] property in this state").

The circuit court identified no discernible standard for applying Section (5); it simply claimed that a receivership can be created out of whole cloth "to correct injustice" when a "creditor" is being prevented from collecting a debt owed. (R. p. ___; Order at 24 (Dec. 6, 2023).) But neither Cape PLC nor CIHL have any "creditors" in South Carolina. The *Park* Plaintiffs have no judgment against Cape PLC or CIHL (there is not even a motion for entry of default in that case), and they unequivocally advised the circuit court that they had "fully resolved" their case over sixteen months ago without any liability attaching to Cape PLC or CIHL.[8] (R. p. ___.) And, there are no other judgment creditors against Cape PLC or CIHL anywhere in South Carolina.

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[8] Nor will there ever be any default judgment entered against Cape PLC or CIHL in *Park*, as the circuit court has allowed the Receiver to file a third-party complaint in that case against the Locke Lord law firm, which also has no South Carolina presence or connection. (R. p. ___; Am. Compl. filed by the Receiver for Cape, PLC, in *Park v. Armstrong Int'l Inc.*, Case No. 2021-CP-40-02727 (Aug. 9, 2023).) Locke Lord moved to dismiss that pleading and to dissolve this receivership; the

None of the cases cited by the circuit court support the contention that it is consistent with "existing practice" to give receivers plenary power over a foreign company with no assets in this case and allow the receiver to sue other foreign companies to bring foreign assets to South Carolina. The circuit court cited *Virginia-Carolina Chemical v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), and the Alex Murdaugh situation for examples of existing practice. Those cases are not applicable because they involved receiverships over South Carolina parties and property with known South Carolina creditors—and the 21st Century Murdaugh case obviously cannot possibly be considered an "existing practice" for a statute that dates to the 19th Century. This receivership order purporting to seize the foreign assets of an active foreign company without notice and without any South Carolina creditors is unprecedented, and it must be dissolved as being contrary to all South Carolina authority, including the limitations for foreign receiverships expressly created by the General Assembly in South Carolina Code § 15-65-10(4) and incorporated into Section (5).

B. The Receiver is improperly acting as an advocate for the plaintiffs who are responsible for his appointment.

In South Carolina, as elsewhere, "[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution." *Richland Cnty. v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (quoting *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)). Because receiverships are so highly disfavored—after all, they involve a state court attempting to seize private property and placing it in the hands of a third party—the Supreme Court has commanded that the "refusal of revocation [of a receivership], under changed circumstances, is also drastic." *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957).

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circuit court has not heard that motion. In his pleading there, the Receiver purports to be the Receiver for Cape PLC, without any mention whatsoever of CIHL. (R. p. ___.)

Because a receivership involves the seizure of private property by a third party, the Supreme Court has also been clear that a receiver must be scrupulously neutral and cannot act as an advocate or agent of a plaintiff. In fact, the single case cited by the circuit court involved the appointment of a receiver over the assets of a South Carolina citizen, Mr. Hunter, who owed substantial undisputed debts to multiple persons and engaged in a series of transfers to dodge his creditors (including transferring property to his sister and to his lawyer: then-Senator, future-Governor Blease). *Hunter*, 84 S.C. at 221–23, 66 S.E. at 179–80. And while the Supreme Court agreed that a receiver was proper in that situation—involving a South Carolina defendant, identifiable South Carolina creditors, and South Carolina property, none of which are present here—it remanded the matter for consideration of whether the person who had been appointed should be removed because "he was one of the agents of the plaintiff, actively pressing its claims against the defendant." *Id.* at 224, 66 S.E. at 180. As the Court held: "The rule is, that the Court ought to appoint a receiver entirely impartial." *Id.*

Nor is *Hunter* an isolated case. *See, e.g.*, *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 92, 172 S.E. 787, 789 (1934) (warning that appointing "an agent of a creditor of the debtor, who had been placed in receivership," is improper).

But the appointment here violates this rule of neutrality. The Receiver in the *Tibbs* lawsuit is acting *ultra vires*, has incurable conflicts of interest, and is incapable of acting as a receiver, because Mr. Protopapas is not "entirely impartial," but instead is acting as "one of the agents of the plaintiff, actively pressing its claims against the defendant." *Hunter*, 84 S.C. at 224, 66 S.E. at 180. As noted in Table 1 in the Appendix, even though a receivership is supposed to be a rarely-invoked and drastic remedy, this same receiver has already been appointed as a receiver two dozen times in the Asbestos Docket, ***always*** at the request of the same plaintiffs' counsel.

And the Receiver's advocacy on behalf of the asbestos plaintiffs is not mere speculation or guessing by the Altrad Defendants; it is based on the Receiver's own actions and the Receiver's own words.

The Receiver argued below that his goal is to "successfully marshal assets [that] will directly inure to the benefit of the *Park* Plaintiffs," the very plaintiffs who are responsible for his appointment. (R. p. ___; Receiver's Mem. in Opp'n to Dissolution at 22.) But the *Park* Plaintiffs have "fully resolved" their case without any judgment against either Cape PLC or CIHL; the *Park* Plaintiffs are not entitled to a dime from either of these foreign entities and never will be, yet the Receiver claims that he will be responsible for "their reckoning" on behalf of asbestos plaintiffs. (R. p. ___; Third-Party Complaint at "Introductory Statement.")

To ensure no doubt about his role as an advocate for plaintiffs, at the hearing on the motion to dissolve the receivership, the Receiver boasted that he is holding Cape PLC and CIHL "to account for the first time in over 50 years. They haven't even been in a courtroom in the United States, and here we are because a receiver got appointed." (R. p. ___; Hr'g Tr. 27:5–8.) He continued: "And they're being held to account now in this courtroom via the receiver." (R. p. ___; *id.* 28:16–17.) And he concluded by praising his own ambition on behalf of the asbestos plaintiffs who are responsible for his appointments: "If South Carolina is not going to do it [through the receivership]—not going to do it, who is?" (R. p. ___; Hr'g Tr. 37:24–25.)

Given his stated goal of advocating for asbestos plaintiffs, it is not surprising that the Receiver has entirely abdicated his responsibility to protect Cape PLC's and CIHL's interests and demonstrated that he is "so closely connected with one of the parties in interest" that he cannot continue to serve. *Hunter*, 84 S.C. at 224, 66 S.E. at 179–80. In his responsive pleading in *Tibbs*, he has essentially conceded liability as to the entity in receivership by purporting to waive viable

defenses like personal jurisdiction as part of his "day of reckoning" crusade.[9] After admitting liability without any proof or adjudication that unspecified "Cape" fibers caused injury to any South Carolina resident—including the *Park* Plaintiffs or the *Tibbs* Plaintiffs—he then began pursuing his "reckoning" against the Third-Party Defendants based on liabilities he seeks to manufacture.

The Receiver's Third-Party Complaint in *Tibbs* attempts to create liability for Cape PLC or CIHL, and then transfer the very liabilities he creates to dozens of third-party defendants. The law specifically prohibits attempts at "self-piercing" like that urged by the Receiver here. *See, e.g.*, *SCE&G v. UGI Utils., Inc.*, Case No. 2:06-cv-2627-CWH, 2012 U.S. Dist. LEXIS 61487, at *169–70 (D.S.C. Apr. 11, 2012) (explaining that as a general matter, "the corporate veil is never pierced for the benefit of the corporation or its stockholders," and observing that "[s]elf-piercing claims are rare and often rejected out of hand" (quoting 18 Am. Jur. 2d *Corporations* § 46)).

The Receiver's efforts to generate liability against Cape PLC and CIHL on behalf of asbestos plaintiffs (none of whom have ever received a judgment against either entity) directly defy the circuit court's original charge that he "protect the interests of Cape whatever they may be." (R. p. ___; Appointment Order at 1.) That outrageous conduct leads to the unavoidable conclusion that the Receiver cannot lawfully continue to serve. *See generally Cudd*, 172 S.C. at 91–92, 172 S.E.2d at 788–

[9] Although the Receiver was appointed *prejudgment* to protect the interests of Cape PLC (later switched to CIHL) whatever they may be, he has already purported to answer the *Tibbs* complaint on behalf of Cape PLC and thus waived Cape PLC's personal jurisdiction objection. *Wellin v. Wellin*, 427 S.C. 15, 24, 828 S.E.2d 767, 772 (Ct. App. 2019). The Receiver also argued in his opposition to the motion to dissolve the Receivership that the circuit court has personal jurisdiction over Cape PLC and CIHL, and he submitted a proposed order to the circuit court (which was signed without alteration) finding personal jurisdiction over the entities he was charged with protecting. (R. pp. ___–___; Order at 35–36 (Dec. 6, 2023).) Not only is this receivership attempting to engage in an unlawful seizure of foreign assets, it is unconscionable to forfeit ironclad, constitutional defenses held by the foreign companies for whom he purports to speak.

89 (reinforcing that only someone "untrammelled in his relations, entirely indifferent between the parties, and absolutely fair and impartial" can serve as a receiver).

C. A receivership cannot be created in perpetuity for all future South Carolina asbestos cases.

Nor is the circuit court correct that the Receiver's appointment in the *Park* lawsuit is sufficient to deputize him as the Receiver for Cape PLC (or CIHL) for any and all future asbestos lawsuits in which Cape PLC (or CIHL) is named as a party—including the separate *Tibbs* lawsuit. Appointment of a receiver is an exceptional remedy that must be assessed on a case-by-case basis and is contingent on the unique facts and circumstances of a particular case. *See, e.g., Wrenn v. Wrenn*, 228 S.C. 588, 593, 91 S.E.2d 267, 269 (1956) (explaining "the facts of the particular case at hand ought to govern" and no receiver should be appointed "unless the particular circumstances render it advisable"). There is no South Carolina authority holding that an appointment under Section 15-65-10 applies forever and for all cases, without regard to the specific facts of those future and different cases, and neither the Receiver nor the circuit court has identified any.

This Court must reject this perpetual appointment theory because it conflicts with Section 15-65-10 (which calls for a case-by-case analysis), South Carolina precedent (which always reviews the propriety of receivership orders based on the specific facts of the underlying case in which the appointment is made), and because the theory is unconstitutional for the reasons explained below, particularly in the prejudgment context seen here.

II. The receivership appointment violates the United States Constitution and federal law.

A. The receivership must be dissolved because its extraterritorial scope violates the dormant and foreign Commerce Clause.

A South Carolina state court cannot lawfully take assets away from foreign businesses (over which it has no personal jurisdiction) and give them to a South Carolina receiver to "fully

administer." The South Carolina receivership statute acknowledges this in-state-only limitation on the reach of a receivership. *See* S.C. Code Ann. § 15-65-10(4) (limiting a receiver's ability to marshal only "the property within this State of foreign corporations"). Such a limitation is rooted in the constitutional requirement that a state law cannot have extraterritorial effect:

> The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.
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> The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not "project its legislation" into another, as the Commerce Clause "precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State."

Carolina Trucks & Equip., Inc. v. Volvo Trucks of N.A., Inc., 492 F.3d 484, 489–90 (4th Cir. 2007) (cleaned up).

A receiver's ability to marshal property across state or national lines involves interstate or foreign commerce, as Congress itself has limited when such authority exists and has made such a remedy available only through the federal courts. 28 U.S.C. §§ 754, 3103. The South Carolina Supreme Court has recognized these federal constitutional limits on the scope of a state court receivership: "The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.'" *Pollock v. Carolina Interstate B. & L. Assn.*, 48 S.C. 65, 25 S.E. 977, 980 (1896) (quoting Gluck & B. Rec. p. 3). "[C]ourts of equity cannot acquire extraterritorial jurisdiction over property by appointing receivers." *Id.* (quoting 20 Am. & Eng. Enc. Law, 65, 66). "[T]he jurisdiction of a state is restricted to its own territorial limits." *Ex parte First Penn. Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966). "[T]he general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. A statute which purports to have such operation is invalid." *Id.* "South Carolina rules

of construction provide that statutes must not be read to operate outside the state's borders." *Carolina Trucks*, 492 F.3d at 489. "The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction." *Id.* (cleaned up).

In *Pollock*, the South Carolina Supreme Court had to determine whether the North Carolina state court's appointment of a temporary receiver for the defendant association rendered service in this state invalid. The Supreme Court made an extensive review of the territorial power of receivers. It noted that the United States Supreme Court ruled that a receiver has "*no extraterritorial power of official action*; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court, or another jurisdiction." *Pollock*, 48 S.C. 65, 25 S.E. at 980 (quoting *Booth*, 58 U.S. at 338.) (emphasis added). The Supreme Court also noted that it had previously "held that an administrator appointed by the courts of Massachusetts had no legal capacity to sue in this state, and that his assignment of the bond and mortgage to a citizen of this state did not give the latter capacity to sue." *Id.* (citing *Dial v. Gary*, 14 S.C. 573 (1881)). It concluded that "[t]his is supported by reason, and the jurisdiction and the power exercised by courts." *Id.* The Supreme Court elaborated that a "court deriving its power from the laws of North Carolina cannot confer any greater power than it is given. Having the right to appoint a receiver in their territory alone, such appointee is a creature of the appointing power, and cannot have greater power than his creator." *Id.* "The stream cannot rise higher than its source." *Id.*

The principle against extraterritoriality as it relates to the dormant Commerce Clause is derived from the notion that "a State may not regulate commerce occurring wholly outside of its borders." *Star Sci., Inc. v. Beales*, 278 F.3d 339, 355 (4th Cir. 2002). "Although the language of dormant Commerce Clause jurisprudence most often concerns interstate commerce, essentially the same doctrine applies to international commerce." *Atl. Mach. & Equip., Inc. v. Tigercat Indus.*, 427 F. Supp. 2d 657, 663–64 (E.D. Va. 2006) (quoting *Antilles Cement Corp. v. Anibal Acevedo Vila*, 408 F.3d 41, 46 (1st Cir. 2005)). "[A] state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. Beer Inst.*, 491 U.S. 324, 332 (1989).

The circuit court's rulings ignore the concept of interstate and international commerce reserved to the federal government, not the states. The circuit court has no authority or jurisdiction outside of South Carolina, yet it construed Section 15-65-10(5) to allow it to put extraterritorial assets into a receivership as punishment for Cape PLC and CIHL "refusing to appear in the United States." (R. p. ___; Order at 24 (Dec. 6, 2023).) But the circuit court and the Receiver cannot take charge over any property outside of the South Carolina, let alone outside of the United States. The circuit court's extraterritorial interpretation of Section (5) violates the dormant and foreign Commerce Clause and is an error of constitutional law.

B. A receivership cannot be misused to bypass the Due Process Clause by bring claims against foreign entities and individuals who are beyond the circuit court's jurisdiction.

Not only are Cape PLC and CIHL beyond the reach of the circuit court's authority to create a receivership, so too are the Altrad Defendants with respect to the circuit court's ability to exercise personal jurisdiction over them through the Receiver. Attempting to enforce a South Carolina receivership statute against a foreign person or entity over which the court has no personal

jurisdiction—in order to seize foreign assets—violates the Due Process Clause of the U.S. Constitution. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). Here, though, the circuit court has wrongly ignored basic Due Process jurisprudence in order to extend the Receiver's reach extraterritorially. The circuit court incorrectly treats claims by a foreign company against other foreign companies and individuals as "property within this State" without assessing whether it has personal jurisdiction over those foreigners in the first place. S.C. Code Ann. § 15-65-10(4). This is an error of black-letter law.

Importantly, the circuit court did not attempt to find that it had general or specific jurisdiction over either Mr. Altrad or AIA. (R. pp. ___–___; Order at 38–47 (Dec. 6, 2023).) Nor can the circuit court legitimately exercise personal jurisdiction over either.

Neither Mr. Altrad nor AIA is "at home" in South Carolina, as neither has ever had anything to do with this State. *See BNSF Ry. V. Tyrrell*, 581 U.S. 402, 413 (2017) (reiterating that general jurisdiction is only available when a defendant's operations are so "continuous and systematic" in a forum that it is "at home" in that state).

Nor can specific jurisdiction attach to either. In order to exercise personal jurisdiction—general or specific—"[d]ue process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023) (quoting *Moosally W.W. Norton & Co.*, 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004)). The Receiver bore the burden of proving that Mr. Altrad and AIA are subject to personal jurisdiction before the circuit court. *Moosally*, 358 S.C. at 327, 594 S.E.2d at 882.

The record evidence is unambiguous that no such showing has been made here.

Mr. Altrad. Mr. Altrad is barely mentioned in the Receiver's Third-Party Complaint. Aside from the caption, the Third-Party Complaint specifically mentions Mr. Altrad only four times, none of which even suggest Mr. Altrad has any connection with South Carolina:

- Once in the opening paragraph listing the Third-Party Defendants;
- Once in Paragraph 25 to acknowledge the fact that Mr. Altrad is ***not*** a resident of the State of South Carolina;
- Once in Paragraph 118 to allege in a single, conclusory sentence that "[t]he Altrad Group—and thus Cape" is "controlled" by Mr. Altrad, based on his status as the "President and Founder" of the "Altrad Group"; and
- Once in the table included as part of Paragraph 119 along with other "Altrad Ownership" entities purportedly comprising a factually inaccurate listing of "Altrad Third-Party Defendants," as defined by the Receiver himself.

But Mr. Altrad's Affidavit establishes that he has "no connection to South Carolina whatsoever," (R. p. ___; Aff. Altrad ¶ 6) because:

- He is a citizen of France and resides in Montpellier, France. (*Id.* ¶ 2.)
- He has never visited South Carolina for any purpose. (*Id.* ¶ 5.)
- He has no assets of any sort in South Carolina. (*Id.* ¶ 7.)
- He has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina. (*Id.* ¶ 13.)
- He has never sought to procure insurance for any person or property, tangible and intangible, in South Carolina. (*Id.* ¶ 14.)
- He has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina. (*Id.* ¶ 16.)
- He had never owed or paid corporate, employment, sales tax, or real property taxes in South Carolina. (*Id.* ¶¶ 19–20.)
- He had never contracted to supply services, goods, or things in South Carolina, and he had never supplied services or delivered goods or things in South Carolina. (*Id.* ¶ 23.)

These facts were uncontroverted below, and they demonstrate that Mr. Altrad is not subject to either general or specific personal jurisdiction in South Carolina: he is not essentially "at home" in this State, and he has not purposely availed himself of the benefits of something within the State of South Carolina to support imposition of personal jurisdiction. The idea that the Receiver could force Mr. Altrad, a foreign citizen, to appear and defend claims simply based on four passing mentions of his name in a 65-page, 145-paragraph third-party complaint offends all legitimate notions of due process.

More specifically, given the absence of any connection between Mr. Altrad and South Carolina, there are not sufficient minimum contacts with South Carolina to render the circuit court's exercise of personal jurisdiction over Mr. Altrad permissible under the Due Process Clause. Mr. Altrad never had any personal involvement, in any capacity, in the milling, mining, or sale of asbestos anywhere in the world, nor has he ever had any personal involvement in the production, manufacture, or distribution of asbestos or asbestos-containing products for use in any state of the United States, including South Carolina—and there isn't a single fact, allegation, or finding by the circuit court to the contrary. (R. p. ___; Aff. Altrad ¶¶ 29–30.)

Altrad Investment Authority. So, too, is the Receiver's pleading devoid of any basis for a South Carolina court to exercise personal jurisdiction over AIA. The Third-Party Complaint acknowledges that AIA is "a corporation organized under the laws of France, with its principal place of business in Florensac, France." (R. p. ___; Third-Party Complaint ¶ 29.) Other than the caption, the Third-Party Complaint specifically mentions AIA only four times:

- Once in the opening paragraph listing the Third-Party Defendants;
- Once in Paragraph 29 to acknowledge the fact that AIA is ***not*** a resident of the State of South Carolina;

- Once in Paragraph 116 to allege that a separate subsidiary of AIA "acquired and has since controlled Cape" as of October 9, 2017; and

- Once in the table included as part of Paragraph 119 along with other "Altrad Ownership" entities purportedly comprising a factually inaccurate listing of "Altrad Third-Party Defendants," as defined by the Receiver.

As further detailed in the Affidavit of Richard M. Alcock, AIA is a non-resident of the State of South Carolina and has no connection to South Carolina in that, among other things:

- On December 23, 2010, AIA was organized under the laws of France (registered number 529222879) as a French SAS (Société par Actions Simplifiée) and has always been organized under the laws of France. (R. p. ___; Aff. Alcock ¶ 3.)

- AIA conducts no operations and does not have, and never has had, its principal place of business in South Carolina. (*Id.* ¶ 4.)

- AIA has never been registered as a foreign company authorized to transact business or otherwise licensed in South Carolina, and AIA has never transacted any business in South Carolina. (*Id.* ¶ 7.)

- AIA has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and AIA has never had an office or agency in South Carolina. (*Id.* ¶ 10.)

- AIA has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina. (*Id.* ¶ 11.)

- AIA has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and AIA has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina. (*Id.* ¶ 17.)

- AIA has never invested any dollars in business operations in South Carolina. (*Id.* ¶ 18.)

- AIA has never contracted to supply services, goods, or things in South Carolina, and AIA has never supplied services or delivered goods or things in South Carolina. (*Id.* ¶ 20.)

- AIA has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina. (*Id.* ¶ 21.)

- AIA has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina. (*Id.* ¶ 29.)

- AIA has never had any subsidiaries incorporated in South Carolina or with their principal place of business in South Carolina. (*Id.* ¶ 30.)

- AIA has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina. (*Id.* ¶ 32.)

- AIA has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed. (*Id.* ¶ 35.)

- AIA has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina. (*Id.* ¶ 6.)

The Third-Party Complaint contains zero allegations of any connections AIA has with South Carolina. Like the allegations regarding Mr. Altrad, it does not even make any generic or conclusory ones. Like Mr. Altrad, AIA is not subject to either general or specific personal jurisdiction in South Carolina: it is not essentially "at home" in this State, and it has not purposely availed itself of the benefits of something within the State of South Carolina to support imposition of personal jurisdiction. And like Mr. Altrad, a finding of personal jurisdiction cannot be based on four passing mentions of AIA's name in a 65-page, 145-paragraph Third- Party Complaint.

* * * * *

The absence of personal jurisdiction here should be obvious. But the circuit court shunned the traditional personal jurisdiction "minimum contacts and fundamental fairness" analysis and, instead, relied on three novel "equitable grounds" for personal jurisdiction—an "alter ego" theory, a "single business enterprise" theory, and a "guiding spirit" theory—to force a French individual and a French company to defend themselves in South Carolina.

This was legal error for several reasons. First, there is no authority that would allow the circuit court to exercise personal jurisdiction over disparate defendants based on an "amalgamation" or a "single-business enterprise" theory. The United States Supreme Court has

been clear that "[e]ach defendant's contact with the forum State must be assessed individually" for purposes of personal jurisdiction. *Calder v. Jones*, 465 U.S. 783, 790 (1984). The circuit court cited several alleged "enterprise" cases, but none of those cases actually applied such a theory to establish personal jurisdiction over numerous defendants; instead, the "theory" was always limited to a merits inquiry about liability, not jurisdiction.[10]

Second, the circuit court only attempted use its equitable theories to displace Due Process as a basis for personal jurisdiction over the Altrad Defendants after it first found that Cape PLC (a Jersey company that did not even exist until 2011) was rightly subject to personal jurisdiction in South Carolina. But the only basis for the circuit court's finding is *the Receiver's own statements* about how a company other than Cape PLC had a national distribution network of asbestos sales decades ago and decades before either of the Altrad Defendants ever had an ownership interest in Cape PLC. (R. pp. ___, ___–___; Order at 35, 71–73 (Dec. 6, 2023).)

In other words, the circuit court appointed a Receiver over an active foreign company with no property in South Carolina; that Receiver then purported to concede personal jurisdiction within South Carolina on behalf of Cape PLC or CIHL; and the circuit court then used that "concession"

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[10] These cases are cited on Pages 32 through 35 of the December 6th Order. *See Las Palmas Assocs. v. Las Palmas Ct. Assocs*., 235 Cal. App. 3d 1120, 1249–50 (1991) (stating that "under the single-enterprise rule, liability can be found between sister companies," without addressing personal jurisdiction); *Walbeck v. I'On, Co*., 439 S.C. 568, 590–94, 889 S.E.2d 537, 548–50 (2023) (similar); *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280 (2018) ("formally recogniz[ing] today this single business enterprise theory" of liability without evaluating its applicability to the personal jurisdiction analysis); *Duong v. N. Am. Trans. Servs. LLC*, No. 2:17-cv-01089-DC, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (rejecting applicability of the "single business enterprise theory" of personal jurisdiction because "there are no contacts for the court to impute" to each of the individual defendant entities); *DorFman v. Marriott Int'l Hotels, Inc*., No. 99 CIV 10496(CSH), 2002 WL 143643, at *11 (S.D.N.Y. Jan. 3, 2002) (exercising personal jurisdiction based on an alter-ego finding that there was an "agency relationship" between the two companies); *Ruiz v. Economics Lab., Inc*., 290 F. Supp. 701, 703 (D.P.R. 1968) (similar).

as an "equitable" end-run around the Due Process Clause's prohibition on exercising personal jurisdiction over the Altrad Defendants, who had nothing to do with Cape PLC or CIHL until 2017.

That does not comport with any conception of the Due Process Clause, it is an unlawful extension of the Receiver's authority to reach outside of South Carolina, and it reinforces the impropriety of the Receiver's performance of his role as an advocate for the asbestos plaintiffs who are responsible for his appointment.

Third, these "equitable" avenues to circumvent the Due Process Clause fail on their merits. In the Third-Party Complaint, the Receiver did not make any effort to establish personal jurisdiction over the Altrad Defendants through a corporate veil-piercing, alter ego, or any related theory. Mr. Altrad argued that a veil-piercing theory cannot establish personal jurisdiction over Mr. Altrad—a French citizen—based merely on his status as a corporate officer and indirect shareholder of AIA—a French company. (R. p. ___; Aff. Altrad ¶ 32.) The Receiver's one-word allegation that the undefined "Cape" is "controlled" by Mr. Altrad by virtue of his status as a shareholder and corporate officer of AIA is conclusory, and it is also irrelevant to veil piercing or alter ego because Mr. Altrad's alleged "control" started in 2017—decades ***after*** the conduct at issue.

Before 2017, Mr. Altrad had no affiliation or connection with Cape PLC, with CIHL, with any direct or indirect subsidiary of Cape PLC, with any direct or indirect subsidiary of CIHL, or with any predecessor or successor to those entities. (R. p. ___; *id.* ¶ 31.) Cape PLC was a publicly traded company on the London Stock Exchange through 2017, and its shares were owned by the general public. (R. p. ___; *id.* ¶ 34.) In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of

Altrad UK Limited. (R. p. ___; *id.* ¶ 35.) This timing is critical because both the alleged asbestos exposure that is the basis of the *Tibbs* Complaint and the alleged "liability-avoidance scheme" that is the basis of the Third-Party Complaint occurred decades earlier. Thus, Mr. Altrad could not have exerted any "control" over "Cape" during the relevant time period.

Even after 2017, Mr. Altrad never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity, in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity—and, again, there isn't a single allegation to the contrary. (R. p. ___; *id.* ¶ 36.) Because Mr. Altrad has never even been alleged to use the corporate form of any entity for any improper or fraudulent purpose to cause harm to anyone, there is no basis for the Court to exercise personal jurisdiction over him on an alter ego theory or any other legal theory. (R. p. ___; *id.* ¶ 37.) As explained above, the Third-Party Complaint is completely devoid of any factual allegations ***specific*** to Mr. Altrad that would support the exercise of personal jurisdiction over this French citizen.

The Receiver's pleadings suffer from the same fatal defects with respect to AIA, as it also makes no effort to establish personal jurisdiction through a corporate veil-piercing, alter ego, or any related theory. The conclusory allegation that AIA "failed to follow corporate formalities" is not enough. Here, the only allegation in the Third-Party Complaint with respect to AIA is that its wholly-owned subsidiary, Altrad UK Limited, acquired the stock of undefined "Cape" in 2017.

(R. p. ___; Third-Party Complaint ¶ 116.) However, the acquisition of Cape's publicly traded shares by an AIA foreign subsidiary through a public tender offer in 2017 cannot possibly subject AIA, the foreign parent, to the jurisdiction of South Carolina's courts. The Receiver's allegation that AIA "acquired and has since controlled Cape" is conclusory, and it is also irrelevant to veil piercing or alter ego because, as with Mr. Altrad individually, AIA's alleged "control" started in 2017—decades after the conduct at issue.

Like Mr. Altrad himself, before 2017, AIA had no affiliation or connection with Third-Party Plaintiff Cape PLC, CIHL, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of CIHL, or any predecessor or successor to those entities. (R. p. ___; Aff. Alcock ¶ 39.) Cape PLC was a publicly traded company on the London Stock Exchange through 2017, and its shares were owned by the general public. (*Id.* ¶ 40.) In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of Altrad UK Limited. (*Id.* ¶ 41.) At no time has Cape PLC or any of its direct or indirect subsidiaries been combined with, merged into, or transferred their liabilities to AIA or any of AIA's other direct or indirect subsidiaries, including in connection with the Cape PLC Acquisition. (*Id.* ¶ 42.) This timing is important because the alleged asbestos exposure that is the basis of the *Tibbs* Complaint, and the alleged "liability-avoidance scheme" that is the basis of the Third-Party Complaint, occurred decades earlier. Thus, AIA could not have exerted any "control" over "Cape" during the relevant time period, so there is no basis for personal jurisdiction over AIA.

Even after 2017, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained their own separate corporate structures, observed corporate formalities, have duly

appointed and functioning corporate management and executive officers, have maintained separate corporate records, have maintained appropriate corporate controls and accounting for all financial distributions and payments, have been adequately capitalized to meet their ongoing operational and financial obligations, if any, and in all ways have operated in a manner consistent with their existence as separate corporate entities. (*Id.* ¶ 43.) Furthermore, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained separate bank accounts from each other, have not commingled assets or funds with each other, have maintained separate books and records from each other, and have maintained appropriate corporate controls and accounting for all financial distributions and payments. (*Id.* ¶ 44.) The Third-Party Complaint is completely devoid of any factual allegations specific to AIA that would support the exercise of jurisdiction over this French company. The sole allegation that AIA's wholly-owned subsidiary acquired the publicly-traded stock of Cape is insufficient to obtain personal jurisdiction over AIA under an alter ego theory or any other.

Finally, the Third-Party Complaint does not establish personal jurisdiction through a corporate veil-piercing, alter ego, or any related theory because AIA has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity. (*Id.* ¶ 46.) Thus, Cape PLC and its direct and indirect subsidiaries are distinct business entities with separate corporate structures, separate corporate formalities, and separate financials from its direct and indirect parent companies, including Altrad UK

Limited and AIA. (*Id.* ¶ 45.) As such, the Court cannot exercise personal jurisdiction over AIA based on a veil piercing or alter ego theory, because AIA and Cape have observed corporate formalities and maintained their separate corporate existence. (*Id.* ¶¶ 43–49.)

The order purporting to find sufficient basis to exercise personal jurisdiction over Mr. Altrad and AIA does not rely on the obviously and admittedly insufficient allegations of the Third-Party Complaint. General jurisdiction as to this French individual and French company is impossible; the circuit court disavowed any reliance on general jurisdiction in a footnote. As to specific jurisdiction, the meager and conclusory allegations described in the Third-Party Complaint are clearly insufficient. The complete absence of jurisdictional facts as to Mr. Altrad or AIA in the Third-Party Complaint leaves as the only basis for imposition of personal jurisdiction the circuit court's reliance on annual reports of the Altrad Group and various websites that the Receiver cited during motions practice that are not in the Third-Party Complaint. None of these sources establish personal jurisdiction on "equitable grounds" based on facts specific to these two French parties, as none mention South Carolina in any way.[11]

Amazingly, the order actually purports to predicate the exercise of personal jurisdiction over Mr. Altrad based upon a news report regarding a finding that Mr. Altrad conspired with the World Rugby vice-chairman Bernard Laporte for certain sponsorship rights for Altrad Group regarding the French national rugby team. (R. p. ___; Order at 45 n.27 (Dec. 6, 2023).) To state the obvious, rugby has nothing to do with asbestos, and South Carolina does not have a

[11] For instance, a Reuters article relied on by the circuit court does not contain any facts which could support imposition of personal jurisdiction over these non-resident defendants as a matter of law: no references to South Carolina, the word "asbestos" or the names "Cape Asbestos," "Cape Industrial Holdings Limited," or Mr. Altrad. (*See* R. p. ___; Order at 39 n.22 (Dec. 6, 2023) (citing https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-poundsidUSL4N1JY2KG).)

professional rugby team, rendering the article wholly irrelevant to the question of personal jurisdiction. Nor does there appear any support for exercise of personal jurisdiction in the embedded links to other articles regarding the Altrad Group. (R. p. ___; *id.* at 46.)[12] Notably missing from all links and articles cited by the circuit court: any reference to the State of South Carolina, the words "asbestos," "Cape," "Cape Asbestos," or "Cape Industrial Holdings." And, in fact, instead of supporting the proposed order's finding that Mr. Altrad is the "spirit guide" who personally controls all decisions of all of the companies, these links specifically explain that although it is a privately held company, the Altrad Group follows the rules for governance of publicly listed French companies. The website makes clear that Altrad Group is led by multiple people including 11 members of the Board of Directors "who guarantee the objectivity of the proceedings" through a system of governance that "reinforces the power of control and independence of directors."

The order on appeal finds the Altrad Defendants within the circuit court's jurisdictional reach, and the Receiver's claims against them legitimately within South Carolina, not upon facts contained in the record, but upon the Receiver's interpretation of website content viewed through the prism of his self-appointed quest to bring a "day of reckoning." The evidence cited as the basis of the order is insufficient as a matter of law to support the exercise of personal jurisdiction over these foreign third-party defendants.

At bottom, by disregarding the actual personal jurisdiction analysis required by the Due Process Clause in favor of "equitably" exercising personal jurisdiction over foreign people and

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[12] The links in the circuit court's order are to generic information regarding the Altrad Group: https://www.altrad.com/en/our-history.html and https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20Mohed,humanist%20conception%20of%20the%20company.

companies based on the Receiver's mischaracterizations, the circuit court wrongly treated the Receiver's third-party claims against foreign defendants as if they were in-state property subject to the court's jurisdiction without regard to the Due Process protections afforded litigants. But none of the personal jurisdiction arguments raised in the appealed order withstand scrutiny. If this Court accepts the circuit court's analysis, then the Receiver will be able to drag any foreign shareholder, officer, parent, subsidiary, or affiliate into a South Carolina court by alleging in conclusory fashion, and without any factual basis at all, that they are all the "guiding spirit" of the entity in receivership, and that they are all part of "a single business enterprise." Merely alleging alter ego and reciting these magic words is not enough to obtain universal jurisdiction over foreign individuals and entities. Due Process demands more, and the circuit court's disregard of constitutional safeguards is legal error.

C. The receivership violates the Takings, Due Process, Equal Protection, and Excessive Fines Clauses of the U.S. Constitution.

"A Receiver is the officer of the Court—as he has been termed, the arm of the Court." *In re Am. Slicing Mach. Co*., 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). As such, the appointment of a receiver implicates the restrictions on arbitrary state action contained in the U.S. Constitution. In addition to violating the Commerce Clause and Due Process Clauses, allowing the receivership to proceed in these circumstances would contravene the Taking Clause, the Excessive Fines Clause, and the Equal Protection Clause of the U.S. Constitution.

Taken at face value, the appointment order relies on a single non-appearance in the *Park* case—where no default was ever entered, and where lawful service of process on Cape PLC or CIHL is not found anywhere in the record—to give the Receiver control of the affairs of an entire foreign company, dispose of foreign assets, concede liabilities, control the defense of the company in South Carolina for all time, and sue foreign third parties on its behalf, among other things. This

state action implicates the constitutional rights of both the entity in receivership and the targets of that receivership. Because the Receiver pleads that Mr. Altrad and AIA have an indirect ownership interest in Cape PLC (or CIHL), state interference in their property interests is implicated as well.

Particularly in the absence of any civil judgment or criminal conviction, this prejudgment receivership that purports to seize control of an active foreign company and its foreign assets without any predicate adjudication of liability runs afoul of the Takings Clause. *See Branch ex rel. Me. Nat'l Bank v. United States*, 69 F.3d 1571, 1576 (Fed. Cir. 1995) (holding that the legal predicate for creating a receivership "might be challenged on Takings Clause or other constitutional grounds"). "[T]hough the classic taking is a transfer of property to the State or to another private party by eminent domain, the Takings Clause applies to other state actions that achieve the same thing." *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 713 (2010).

As noted in the text of the Fifth Amendment itself, governments may only effect takings that are for "public use." U.S. Const. amend. V. This means, for example, the government may not transfer private property from one party for the sole purpose of benefitting another private party. *See Kelo v. City of New London*, 545 U.S. 469, 477 (2005) ("the City would no doubt be forbidden from taking petitioners' land for the purpose of conferring a private benefit on a particular private party"); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984). The public use requirement circumscribes the scope of government power to seize private property: the Government may compel an individual to forfeit his property for the public's use, but not for the benefit of another private person. *See id.* This receivership violates the Takings Clause because the Receiver (an arm of the state) is purporting to seize control of Cape PLC (or CIHL)—and taking possession of its foreign assets—for the purported purpose of distributing those assets to South Carolina residents

who are not even creditors of either Cape PLC or CIHL. There is no just (or any) compensation for this taking, and the exercise is designed to redistribute assets for the benefit of private persons, not the public at large.

This receivership also violates the Due Process Clause, which states that the Government must provide a person with due process of law when acquiring his property. U.S. Const. amends. V, XIV. To plead a procedural due process claim, a plaintiff must demonstrate he (1) "had a constitutionally cognizable life, liberty, or property interest," (2) "the deprivation of that interest was caused by some form of state action," and (3) "the procedures employed were constitutionally inadequate." *Sansotta v. Town of Nags Head*, 724 F.3d 533, 540 (4th Cir. 2013) (cleaned up). "At bottom, procedural due process requires fair notice of impending state action and an opportunity to be heard." *Snider Int'l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014).

There was no notice here, much less fair notice. As explained above and reiterated below, Cape PLC was not served with any papers in the *Park* action, and CIHL did not receive statutory notice of the motion to appoint the receiver in *Park* or the seeming modification of the receivership order in *Tibbs*. In addition to the lack of notice, the procedures employed here when creating this prejudgment receivership were constitutionally inadequate—the circuit court purported to seize control of a foreign company without any adjudication, much less a fair adjudication, that the target of the receivership was liable on any ground or to any person. Given the procedural defects in the appointment process—both in the *Park* and *Tibbs* lawsuits—the receivership does not pass constitutional muster.

This prejudgment receivership also violates the Excessive Fines Clause and the Substantive Due Process Clause. "The Excessive Fines Clause of the Eighth Amendment prohibits the government from imposing excessive fines as punishment." *Korangy v. FDA*, 498 F.3d 272, 277

(4th Cir. 2007). Where “a civil sanction ‘can only be explained as serving in part to punish,’ then the fine is subject to the Eighth Amendment.” *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 387 (4th Cir. 2015). In such a case, the fine “will be found constitutionally excessive only if it is ‘grossly disproportional to the gravity of [the] offense.’” *Id.* A civil forfeiture is considered to be a punishment and, thus, constitutes a fine for purposes of an Eighth Amendment proportionality analysis. *United States v. 79,650.00 Seized from Bank of Am. Account Ending in 8247*, 650 F.3d 381, 386 n.8 (4th Cir. 2011).

Relatedly, the Due Process Clause imposes limits on “grossly excessive” monetary penalties that go beyond what is necessary to vindicate the Government’s “legitimate interests in punishment and deterrence.” *Id.* Here, the purported prejudgment seizure of a foreign company and all its foreign assets by a South Carolina court can only be described as an extreme civil sanction and forfeiture. It is clearly disproportionate to the gravity of the offense because it was based upon Cape PLC’s alleged non-appearance in the *Park* lawsuit, without even an entry of default or a default judgment. These constitutional provisions bar a South Carolina court from giving power to a Receiver to take over a foreign company and its assets without any predicate adjudication of liability, and without the personal jurisdiction to do so, and distribute those assets in violation of the property rights of the foreign company and its owners.

Finally, “the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening ‘the residents of other state members of our federation,’” and the same principle applies to gross discrimination against “foreign corporations.” *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 878–79 (1985). The substantive Due Process analysis is virtually the same—that is, whether the challenged law is rationally related to a legitimate state purpose. *Id.* at 875; *Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 487-488 (1955). The abuse of South

Carolina's receivership statute to seize foreign assets on a prejudgment basis, strip the company of its ability to defend itself, and then redistribute them to an in-state receiver and non-creditor residents lacks the legitimacy required by the law. The order should be vacated accordingly.

III. The receivership appointment violated the procedural requirements of the South Carolina statute governing receiverships.

In addition to being substantively violative of South Carolina receivership law and the United States Constitution, the receivership over CIHL must be dissolved because the motion to appoint the Receiver in the *Park* lawsuit did not reference CIHL, meaning notice of the appointment was not properly provided to CIHL as required by South Carolina Code § 15-65-20.

Both the Receiver and circuit court admit that the active Jersey entity named in the order appointing the receiver—Cape PLC—was not served with any papers in the *Park* action. Cape PLC was not served with the summons and complaint or the motion to appoint the receiver. Indeed, the Receiver confirmed that Cape PLC was "organized under the laws of the Bailiwick of Jersey in 2011," is an active foreign company that is not insolvent or dissolved, and is a "holding company of the Cape Group." (R. p. ___.) Yet, the *Park* Second Amended Complaint and the Motion to Appoint Receiver were admittedly **not** served on Cape PLC through its registered agent in Jersey in accordance with the Hague Convention. These facts alone defeat the receivership as to Cape PLC a matter of law and render the initial appointment order a nullity, as notice of both the *Park* lawsuit and the motion to appoint the receiver are mandatory conditions precedent to the effectiveness of the receivership.

That leaves the U.K. entity CIHL. The circuit court recognized that the *Park* complaint named Cape PLC and CIHL as separate defendants. The circuit court further found that the *Park* plaintiffs attempted to separately serve Cape PLC and CIHL at the U.K. address for the registered agent of CIHL (an impossibility). Thus, the Court found that CIHL was properly served with the

First Amended Summons and First Amended Complaint in the *Park* lawsuit because the complaint named CIHL, the summons named CIHL, and the papers were addressed to CIHL and served on the registered agent for CIHL. However, after service of the complaint (which was not even the operative pleading, rendering service ineffective), neither the motion to appoint the Receiver nor the order actually appointing the Receiver referred to CIHL ***at all*** and thus did not give statutory notice to CIHL as required by South Carolina Code § 15-65-20. Nor is there any evidence in the record that CIHL was provided notice of the appealed order substituting CIHL for Cape PLC in the appointment order. This statutory notice requirement is mandatory, and failure to comply voids the appointment.

A. The receivership must be dissolved because CIHL was not provided statutory notice of the motion to appoint the receiver in the *Park* lawsuit as required by South Carolina Code § 15-65-20.

The notice provision for receiverships states as follows:

> No receiver of the property of any person or corporation shall be appointed by any court or judge, either in term time or at chambers, ***without notice of the application for such appointment to the party to the action whose property is sought to be put in the hands of a receiver*** and to any party to the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days' notice of the application must be given, unless the court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.

S.C. Code Ann. § 15-65-20 (emphasis added).

The appealed order provides that "The Park Plaintiffs provided notice of the appointment by DHL mailing to the same address at which Cape was served" in the U.K. (R. p. ___; Order at 22 (Dec. 6, 2023).) Even assuming this is true—and there is no evidence that it is—it is undisputed that the motion for appointment requested a receivership over Cape PLC, ***not*** CIHL. The name CIHL is found nowhere in the motion to appoint the receiver or the order appointing the receiver.

(R. p. ___.) Thus, there is no evidence in the record that CIHL received notice that *CIHL's assets* were the subject of the original receivership order in the *Park* action, nor is there any evidence in the record that CIHL received any notice that it may be subject to the modified receivership order in the *Tibbs* lawsuit—a case in which CIHL is not even a party.

While the Receiver and the circuit court now use the "n/k/a" acronym to pretend that Cape PLC and CIHL are the same entity (which is obviously not true), there was no possible way CIHL could anticipate that the Receiver would try to morph from being a receiver over Cape PLC in *Park* to a receiver over CIHL in *Tibbs*.

The *Park* plaintiffs named Cape PLC and CIHL as separate defendants, and those two entities were purportedly served separately with a summons. The *Park* plaintiffs treated Cape PLC and CIHL as different entities for purposes of the pleadings and for purposes of their motion to appoint a receiver—because they are separate entities. The circuit court likewise treated Cape PLC and CIHL as different entities for purposes of its original appointment order—because they are separate entities.

Not until the receivership was challenged did the Receiver decide to change his identity from being a receiver for Cape PLC as originally ordered to now being a receiver for CIHL. Inexplicably, the circuit court accepted this identity-fluid position proposed by the Receiver, but there is no way an everchanging-based-on-the-circumstances receivership can possibly comport with the South Carolina Code's specific requirements for appointing a receiver, the Supreme Court's repeated warnings that receiverships are drastic and should be avoided, and any notion of Due Process. In short, a receiver cannot choose to identify as a receiver for one company when it suits his desires, but then identify as a receiver for a different company when his desires change.

The only way the circuit court attempted to justify its endorsement of this nebulous receivership was to point to South Carolina's jurisprudence on "misnomer." (*See* R. pp. ___, ___; Order at 19, 22–23 (Dec. 6, 2023) (relying on *Griffin v. Capital Cash*, 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992), as the basis for allowing the receivership to change without any notice to CIHL).) But that line of authority has nothing to do with this situation.

In *Griffin*, the correct defendant was sued in its "d/b/a" name, a name under which it held itself out to the public as the correct business name. As this Court explained:

> It is clear, however, that First Deposit National Bank is authorized to use the name [Capital Cash] and that it actually conducted business under the name. It is also undisputed that it was the only name under which First Deposit National Bank did business with Griffin. Griffin mailed her complaint to Capital Cash by certified mail return receipt requested to the address listed on her monthly billing statements. There is no dispute that Capital Cash received the pleadings.

310 S.C. at 290–91, 423 S.E.2d at 145.

Griffin has nothing to do with the situation here, where the record evidence reveals:

- The *Park* plaintiffs mailed a summons to CIHL. (R. p. ___.)
- The *Park* plaintiffs tried to mail a summons to Cape PLC at the wrong address. (R. p. ___.)
- The *Park* plaintiffs separately identified Cape PLC and CIHL in their pleadings. (R. p. ___.)
- The *Park* plaintiffs identified only Cape PLC as the target of their belated receivership request. (R. p. ___.)
- The circuit court only identified Cape PLC in its order appointing the Receiver in *Park.* (R. p. ___.)
- The Receiver filed a third-party complaint in *Park* in which he purported to be the receiver only for Cape PLC and made no mention of CIHL. (R. p. ___.)
- The *Tibbs* Plaintiffs have not included CIHL in this case. (R. p. ___.)

These facts bear no resemblance to those of *Griffin* or any other "misnomer" case. And perhaps most importantly, the *Park* Plaintiffs themselves have never suggested that they didn't mean exactly what they said when they sought a receivership appointment over Cape PLC.

Ultimately, South Carolina law only allows a plaintiff to assert "misnomer" when "it appears the corporation could not have been, or it was not, misled." *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146. There is no possible way such an argument could prevail here; CIHL obviously would have had no idea that the circuit court in *Tibbs* would find that the receivership appointment in *Park* over Cape PLC was truly meant to apply to CIHL despite the absence of CIHL's name from both the motion for a receiver and the order appointing a receiver in *Park*, despite the fact that the *Park* Plaintiffs have never even hinted that they meant for the appointment to cover CIHL, and despite the fact that CIHL is not even a party in the *Tibbs* case.

Nor is there any authority that supports the circuit court's conclusion that misnomer can be invoked when a plaintiff sues two separate defendants in his complaint and a different litigant in a different case subsequently contends those two separate defendants are actually one and the same. In this scenario, and unlike the misnomer cases involving a single business operating under a trade name, CIHL would have been misled to its prejudice as to the nature of the receivership appointment. As such, misnomer authority cannot salvage the clear failure to give CIHL proper notice that CIHL's assets would be the subject of the receivership, as required by South Carolina Code § 15-65-20.

As a last-ditch effort to salvage the receivership, the circuit court cited two misnomer cases in support of its conclusion that the notice is not void under South Carolina Code § 15-65-20 based on the fact that "the paperwork included a 'formerly known as' name for the Cape entity." (R. p. ___; Order at 23 (Dec. 6, 2023).) Both of those cases are easily distinguishable because they

involved corporate defendants who were sued under the known trade names they used to do business with the plaintiff. *See Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 ("Capital Cash was the name First Deposit National Bank used to do business with Griffin."); *McCall v. IKON*, 363 S.C. 646, 653, 611 S.E.2d 315, 318 (Ct. App. 2005) ("The record unmistakably reveals that IKON Education Services (or IKON Educational Services) was the name IKON used in connection with its computer training courses offered in South Carolina.").

In contrast, this case involves the amendment of a receivership order where the named entity—Cape PLC—is an active Jersey company, where Cape PLC and CIHL were separately named defendants in *Park*, and where the correct name of the entity implicates the due process and notice rights of multiple categories of stakeholders—the Receiver, the entity in receivership, and the Third-Party Defendants who are defending the matter. The Receiver's contention that the wrong name in the receivership order did not mislead or prejudice anyone is absurd; given the fact that Cape PLC is an active Jersey entity, the Altrad Defendants did not know until reading the Receiver's opposition arguments that the Receiver believed he was acting for CIHL. And his actions have certainly belied such a position, as the Receiver continues to make filings purportedly on behalf of Cape PLC in both *Park* and *Tibbs*.

The South Carolina Supreme Court has explained that "when an action is brought against a corporation, the general rule is that where the name is mistaken materially and substantially, or where there is such a variation that a different entity is indicated, the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein." *Tunstall v. Lerner Shops, Inc.*, 160 S.C. 557, 563, 159 S.E. 386, 389 (1931). Because Cape PLC is an active Jersey entity that currently exists, and the fact that CIHL was separately named as a defendant and served with a summons in *Park*, the Altrad Defendants (and CIHL) had every reason to believe

that the reference to Cape PLC in the motion to appoint the receiver and the original appointment order referred to the actual Cape PLC in existence today, not anyone else, including CIHL. Because CIHL did not receive the notice required by South Carolina Code § 15-65-20, the order modifying the receivership to replace Cape PLC with CIHL is void as a matter of law and must be vacated.

B. The receivership must be dissolved because the *Park* lawsuit was completely resolved and settled before the motion to appoint the receiver was filed.

Finally, the appointment order from which this entire situation arises is void on its face because the *Park* case was "fully resolved" for several months before the *Park* plaintiffs even moved for the appointment of a receiver over Cape PLC. There is no dispute that the case was "fully resolved"; the Park family's counsel specifically reported this to the circuit court. (R. p. ___.)

Without an active case, the Park family had no standing to attempt to create a receivership over an active foreign company. It also lacked standing to seek a receiver appointment because they aren't judgment creditors of Cape PLC (or of CIHL, for that matter). But the Receiver, again purporting to speak for the *Park* Plaintiffs, has argued that the report that the *Park* case was "fully resolved" applied only to the "responding defendants"—a qualification found nowhere in the communication itself, and which is directly contrary to the *Park* Plaintiffs' use of the term "fully."

Without a justiciable controversy, and without an actual creditor, the circuit court lacked jurisdiction to appoint a receiver in the first place. Accordingly, this receivership fails from the outset and should be dissolved.

CONCLUSION

This receivership far exceeds the boundaries allowed by law. It runs afoul of every norm of South Carolina receivership law; the United States Constitution; and basic notions of jurisdiction, fairness, and due process.

The Receiver's continuous shapeshifting behavior further exposes the unlawful nature underlying this situation. Respectfully, this Court should put a stop to this sooner rather than later, as the circuit court and the Receiver continue to ignore clear jurisdictional boundaries, even while this appeal is pending. *See generally* Rule 205, SCACR (vesting the appellate courts with "exclusive jurisdiction" over all matters "affected by the appeal").

Accordingly, the circuit court's order continuing and modifying the receivership over Cape PLC or appointing a receiver over CIHL should be vacated, and the Third-Party Complaint should be dismissed.[13]

Respectfully submitted,

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February 22, 2024

[13] To the extent not inconsistent with the arguments presented herein, the Altrad Defendants respectfully adopt and incorporate by reference all arguments and issues presented by all of the other third-party defendants/appellants in this matter. Additionally, to ensure no doubt on the point, the Altrad Defendants submit this brief and their appeal without waiving, but instead specifically preserving, all arguments and objections to personal jurisdiction, which are inextricably intertwined with the merits of the receivership for the reasons explained herein.

APPENDIX: TABLES OF RECEIVERSHIP APPOINTMENTS FROM THE ASBESTOS DOCKET

Table 1: Receivership Appointments from the Asbestos Docket

Company Put in Receivership	Moving Counsel	Who is Appointed	Case in Which Appointment is Made
Covil Corp.	Kassel McVey/Dean Omar Branham Shirley	Peter Protopapas	2018-CP-40-04940
Starr Davis Company, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Starr Davis Company of S.C., Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Southern Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Great Barrier Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-02692
J&L Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Pipe & Boiler Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Piedmont Insulation Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-004475
Presnell Insulation Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01364
Flame Refractories, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
General Boiler Casing Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Payne & Keller Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
United Construction Co. of Rome	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Standard Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Stafford Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
J.R. Deans Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
HEFCO, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Davis Mechanical Contractors, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Heat & Frost Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-06190
Whittaker Clark & Daniel, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01265
Beaty Investments, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01241
Cape PLC	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-02727
Atlas Turner Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834
Asbestos Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834

Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket

Company in Receivership	**Where Located**	**Active/Dissolved**
Starr Davis Company, Inc.	North Carolina	Dissolved
Great Barrier Insulation Co.	Florida	Dissolved
J&L Insulation, Inc.	North Carolina	Dissolved
Piedmont Insulation Inc.	North Carolina	Dissolved
Presnell Insulation Co., Inc.	North Carolina	Dissolved
Flame Refractories, Inc.	Florida	Dissolved
General Boiler Casing Co.	North Carolina	Dissolved
Payne & Keller Co.	Texas	Dissolved (an improper circuit court order attempts to undo this dissolution)
United Construction Co. of Rome	North Carolina	Dissolved/merged with Flame Refractories
Standard Insulation Co.	North Carolina	Dissolved
Heat & Frost Insulation Co.	North Carolina	Dissolved
Whittaker Clark & Daniel, Inc.	New Jersey	Active—Bankruptcy Pending
Beaty Investments, Inc.	North Carolina	Dissolved
Cape PLC	International: Jersey	Active
Atlas Turner Co., Ltd.	International: Canada	Active
Asbestos Co., Ltd.	International: Canada	Active

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PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

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