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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, Circuit Court Judge

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2023-001461

John A. Tibbs and Margaret B. Tibbs.....**RESPONDENTS,**

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AiW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell

Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC, ...**DEFENDANTS**,

Of which Asbestos Corporation Limited is the**APPELLANT**,

and

Peter Protopapas, Duly Appointed Receiver for Atlas Corporation Limited is the.....**RESPONDENT**,

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., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo 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 (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) 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 S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC, ...**THIRD-PARTY DEFENDANTS**,

Of which Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bidco US Inc., Sparrows Offshore, LLC, Anglo 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.....**APPELLANTS**.

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AND
SPARROWS OFFSHORE, LLC

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OFFSHORE, LLC**

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the circuit court erred in continuing and modifying the Cape PLC receivership, and in creating a new receivership over a separate entity, when the appointing court had no authority to create a receivership and doing so was violative of applicable federal and state law and constitutional protections.
- II. Whether the circuit court erred in continuing and modifying the Cape PLC receivership, and in creating a new receivership over a separate entity, in light of the numerous unremedied deficiencies in the underlying appointment.
- III. Whether the circuit court erred in finding it could properly exercise personal jurisdiction over Appellants under traditional bases or theories of amalgamation, single business enterprise, or alter ego.

INTRODUCTION¹

This case presents basic issues of law cloaked in a convoluted factual background. Can a circuit court appoint a receiver over an active, foreign entity with no assets in this state? Can a circuit court appoint a receiver for one entity in one case and then allow that same receiver to act on behalf of a distinct entity in a separate case? Can either occur without compliance with basic rules of civil procedure and adherence to the statutes governing the creation of receiverships as a drastic remedy under limited circumstances? Can South Carolina courts exercise personal jurisdiction over foreign entities that have never had any contact with South Carolina and have no assets in this state? Can historical conduct by an entity unrelated to these Appellants be imputed to later formed, later acquired, and distantly related foreign corporations such that a court can exercise personal jurisdiction over them? And, do due process considerations and other protections afforded the South Carolina and United States Constitutions dissipate just because a circuit court incorrectly determines a receivership is warranted and thereafter may be modified?

¹ By prosecuting this appeal, Appellants do not intend to waive, and expressly preserve, all defenses to the underlying action, including the defense of lack of personal jurisdiction.

The appointing court created a receivership over Cape PLC, not in the underlying *Tibbs* lawsuit, but instead in an earlier asbestos lawsuit that had already been “fully resolved”—according to Plaintiffs’ counsel in that case—nine months earlier, without notice to the entity over which the receivership was created. Cape PLC—distinct from the Cape Intermediate Holdings Limited (“CIHL”) entity over which the circuit court has now deemed the Cape PLC receivership to exist—was never served with a complaint and never received notice of any motion to appoint the Receiver. That Receiver then sued Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC² in this case arguing they were part of a “litigation avoidance” scheme perpetuated by the entity over which the Receiver was appointed—Cape PLC. Each of the Sparrows Appellants was **formed in Delaware** in the 2000s and then **later acquired** in mid-2022 by an entity distantly, and only recently related, via multiple tiers of corporate hierarchy, to the Cape PLC entity over which the Receiver was appointed and even more distantly to the separate CIHL entity over which the circuit court has now deemed this receivership to exist. The Third-Party Complaint filed by the Receiver now seeks “a day of reckoning” for conduct that occurred decades prior in an industry in which the Sparrows Appellants have never participated, to which they have no relation, and for which they have received no benefit.

In this appeal, the Sparrows Appellants ask this Court to grant one or both of the following alternative grounds for relief. First, the Sparrows Appellants maintain the Third-Party Plaintiff—the Receiver—was improperly appointed for a number of substantive and procedural reasons, and accordingly, seek reversal of the circuit court’s order refusing to dissolve and thereby continuing,

² Appellants ArranCo US, LLC (“ArranCo”); Hawk Bidco (US) Inc. (“Hawk Bidco”); and Sparrows Offshore, LLC (“Sparrows Offshore”)—which were collectively referred to as “Sparrows Defendants” before the circuit court—are referred to herein as the “Sparrows Appellants.”

modifying, and, in these circumstances, creating a new receivership. Second, the Sparrows Appellants ask this Court to reverse the circuit court's findings as to personal jurisdiction contained within the same circuit court order on appeal; South Carolina courts cannot hale later-formed and after-acquired entities into proceedings on theories of alter ego, single business enterprise, or amalgamation when the Receiver failed to show any legitimate basis under South Carolina law to apply those theories as has been attempted here. The Sparrows Appellants' fundamental due process and constitutional protections hang in the balance.

STATEMENT OF THE CASE

This appeal stems from a single order (i) refusing to dissolve, but instead continuing, modifying, and effectively creating a new receivership over an active foreign company with no assets in South Carolina, and, inextricably tied thereto, (ii) exercising personal jurisdiction over non-resident entities, through purported equitable grounds of doing so unsupported by law or fact, while foregoing traditional and fundamental principles governing jurisdiction. The factual and procedural background leading to the issuance of the order on appeal follows.

I. The *Park* Lawsuit and Appointment of the Receiver.

This case arises out of a Third-Party Complaint filed in the court below by Peter D. Protopapas (the "Receiver"), who was appointed over an entity named Cape PLC.³ The Receiver, however, was not appointed in this case, but rather was appointed in a separate asbestos lawsuit entitled *Park v. Armstrong International, Inc., et al.*, 2021-CP-40-02727. In the *Park* case, the Plaintiffs sued many entities and specifically named both Cape PLC and CIHL among the

³ Cape PLC is a registered public company in the Bailiwick of Jersey (an island located in the English Channel), and it is a going concern. It is not dissolved, and the Jersey online corporate database makes this inescapable: www.jerseyfsc.org/registry/registry-entities/entity/292339.

defendants, alleging each entity was a “successor-in-interest to Cape Asbestos Company.”⁴ *Id.* See *Park* First & Second Am. Compls. (respectively filed Nov. 17, 2021 and Dec. 23, 2021).

Upon conclusion of the *Park* case—with Plaintiffs’ counsel emailing the circuit court and other counsel that the case was “fully resolved”—both Cape PLC and CIHL were left with no adjudication of damages nor liability. See June 3, 2022 Email of Parks’ Counsel, attached as Ex. C to Sparrows Appellants’ Motion to Dissolve Receivership, filed Aug. 21, 2023 [hereinafter Motion to Dissolve]. Neither Cape PLC nor CIHL were served with the Second Amended Complaint in *Park* prior to the full resolution of that case.⁵ See Sparrows Appellants’ Reply on Motion to Dissolve, filed Oct. 23, 2023, at 5–6.

Nine months later, on March 6, 2023, counsel for the Parks filed a lengthy motion seeking appointment of a Receiver over “Cape PLC and its subsidiaries, affiliates, successors, and assigns” [hereinafter Motion to Appoint]. See Ex. D to Motion to Dissolve. This Motion to Appoint the Receiver was never—and thus far has never been—served on Cape PLC, and no proof of service has been provided as to CIHL.⁶ See Reply on Motion to Dissolve at 6, n.9. Eleven days later, and

⁴ The amended pleadings in *Park* stated Cape PLC is organized under the laws of the United Kingdom with its principal place of business in England. *Park* First & Second Amd. Compls. ¶¶ 15, 26–27. That is incorrect, as Cape PLC is a Jersey company, created in 2011.

⁵ On August 28, 2023, an affidavit of a U.K. process server was filed in *Park* stating only that the “First Amended Summons” was mailed, via Royal mail, to an address in the U.K., which the circuit court used to find proper service as to both Cape PLC and CIHL. *But see* Rule 4(d), SCRCP (“The summons and complaint must be served together.”). Per this filed affidavit, the service of the “First Amended Summons” was asserted to have been effected on December 16, 2021—one week before the *Park* Plaintiffs filed their Second Amended Complaint. Cape PLC was never served with any summons or pleading—initial or amended—in Jersey.

⁶ The circuit court found Cape PLC was served with the Motion to Appoint via DHL solely because the *Park* Plaintiffs, in the Motion to Appoint itself, stated: “Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.” The Sparrows Appellants have opposed that finding as not being supported by any affidavit or DHL delivery confirmation receipt and by noting the fact

without a hearing, on March 17, 2023, the circuit court granted the Motion to Appoint pursuant to subsections 15-65-10(4) and (5) of the South Carolina Code (2005). After noting “Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case,”⁷ the order appointing the Receiver over “Cape PLC” and “its subsidiaries and global affiliates” set forth the following expansive rights and duties, including:

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority 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. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.

See Ex. E to Sparrows Appellants’ Motion to Dissolve [hereinafter *Park* Appointment Order].

Cape PLC is the only entity actually identified by name in this order. *Id.*⁸

II. The Third-Party Complaint in *Tibbs*.

Acting in his capacity as the Receiver for Cape PLC pursuant to the *Park* Appointment Order, on June 30, 2023, the Receiver filed a Third-Party Complaint in *Tibbs v. 3M Company et*

that the referenced “same address” in the U.K. was incorrect for Cape PLC, a Jersey entity. See Reply on Motion to Dissolve at 6, n.9.

⁷ Cape PLC is, and was at the time of the Receiver’s appointment, an active entity based in Jersey. It was first registered there in 2011. The Court and all parties have now acknowledged the error in such statement: Cape PLC (just like CIHL) has not forfeited its charter nor has it (or CIHL) dissolved. See Dec. 6 Order at 25, n.16.

⁸ The *Park* Appointment Order states further that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).” Through the United Kingdom’s official public corporate database, it is clear that Cape Asbestos Company Ltd. (U.K. Company Number 00040203) was incorporated in the U.K. in 1893 has been named “Cape Intermediate Holdings Limited” since 2013. Through Jersey’s official public corporate database, it is equally clear that Cape PLC (Jersey Registration Number 108031) was incorporated there in 2011 and has always been named Cape PLC.

al., 2023-CP-40-01759.⁹ The Receiver’s Third-Party Complaint alleges the named Third-Party Defendants—aggregated into three “groups” of entities, denoted as the “Altrad Third-Party Defendants” (inclusive of the Sparrows Appellants¹⁰), the “Oppenheimer Third-Party Defendants,” and the “Charter Third-Party Defendants”—“are responsible for the sale and use of asbestos or asbestos-containing products throughout the United States, including in South Carolina”; “created sham transactions to feign exits of the asbestos industry in the United States, leaving shells and an absence of insurance coverage to account for their massive liability exposure”; and “amused themselves with the supposed ingenuity of their scheme to avoid any responsibility. This lawsuit begins their reckoning.” *Tibbs* Third-Party Compl. The Receiver’s pleading alleged each grouping was in some way involved in the mining, importation, sale, or distribution of asbestos into the United States on behalf of Cape PLC. *See generally id.* At the time of the filing of the Receiver’s pleading, and until now, there has been no judgment against Cape PLC (or CIHL)—in either *Park* or in *Tibbs*.

The Third-Party Complaint mentions each of the Sparrows Appellants on only four separate occasions: once in the opening paragraph listing the Third-Party Defendants; once in paragraphs 31–33 to acknowledge the fact that each of the Sparrows Appellants is not a resident of the State of South Carolina; once in paragraph 117 with generic and factually inaccurate

⁹ The *Tibbs* Plaintiffs’ active pleading, filed on May 3, 2023, names Cape PLC (and not CIHL).

¹⁰ The Third-Party Complaint in *Tibbs* also named Sparrows Offshore Group, Ltd. and The Sparrows Group, LLC. These are separate and unrelated entities with no affiliation to the Sparrows Appellants and are, therefore, not included, in any respect, to the defined terms “Sparrows Defendants” (as referenced in the proceedings below), or “Sparrows Appellants.” The Sparrows Appellants detailed the basis for this distinction in their December 4, 2023 proposed order on their motions to dismiss for lack of personal jurisdiction [hereinafter Sparrows PJ Proposed Order], at 6–9, as well as their accompanying Objections to the Receiver’s proposed order filed the same day [hereinafter Sparrows Objections to Receiver’s Proposed Order], at 19–20.

references to other “U.S.-registered entities”; and once in the table included as part of paragraph 119 along with other “United States Subsidiaries” purportedly comprising a factually inaccurate listing of the Receiver-defined “Altrad Third-Party Defendants.”

The attenuated, recently established relationship between the Sparrows Appellants and Cape PLC is summarized in the *Tibbs* Third-Party Complaint (paragraphs 116–119 and accompanying footnotes) and is as follows: On October 9, 2017, through a public tender, Altrad UK Limited (“Altrad UK”), a wholly-owned subsidiary of Appellant Altrad Investment Authority SAS (“AIA”), acquired Cape PLC, which prior thereto, was a publicly traded company on the London Stock Exchange. As a result of this Altrad UK acquisition, Cape PLC became a wholly-owned subsidiary of Altrad UK. Through several intermediate tiers of subsidiaries, CIHL was an indirect subsidiary to Cape PLC. Almost five years later, on July 11, 2022, the Sparrows Appellants were acquired by an Altrad entity (not by Cape PLC, CIHL, or any other Cape entity). Accordingly, no relationship ever existed between the Sparrows Appellants and Cape PLC or CIHL until mid-2022, at which time they became very distant corporate cousins. The Third-Party Complaint also incorrectly alleges that the Sparrows Appellants are alter-egos of Cape PLC and that they “dominated, controlled, facilitated, or benefitted from Cape’s” business.

III. Procedural History.

The underlying receivership was created in *Park* on March 17, 2023. Thereafter, the Receiver filed the Third-Party Complaint in *Tibbs* on June 30, 2023 naming the Sparrows Appellants as three of thirty-three Third-Party Defendants. On August 21, 2023, the Sparrows Appellants filed separately or collectively: (1) Motions to Dismiss, in lieu of an Answer, based on a lack of personal jurisdiction and seeking a stay [hereinafter 12(b)(2) Motions to Dismiss]; (2) their Motion to Dissolve the Receivership; and (3) a Motion to Dismiss Pursuant to Rules 12(b)(1)

& 12(b)(6) and Alternative Motion for More Definite Statement and to Strike or Sever Pursuant to Rules 12(e) and 14 [hereinafter 12(b)(6) & Other Motion to Dismiss]. Later, on September 5, 2023, the Sparrows Appellants filed a Motion for Protective Order and to Dissolve Receivership as to discovery served on them [hereinafter Motion for Protective Order]. Thereafter, the circuit court noticed a hearing for October 25, 2023. In anticipation of that hearing, on October 23, 2023, the Sparrows Appellants filed memoranda in support of their various motions. *See Sparrows Appellants' Reply in Support of 12(b)(2) Motions to Dismiss; Reply in Support of Motion to Dissolve and Motion for Protective Order; and Memorandum in Support of 12(b)(6) & Other Motion to Dismiss.* A few days prior, on October 18, 2023, the Receiver filed “omnibus” responses to each of the pending motions filed by the Sparrows Appellants and others.

During the October 25 hearing, the circuit court only considered the Motions to Dissolve and the 12(b)(2) Motions to Dismiss filed by the Sparrows Appellants and the same or similar pending motions filed by other Third-Party Defendants. Following the October 25 hearing but before any rulings were made, on November 17, 2023, the Receiver voluntarily dismissed 11 of the “Oppenheimer Third-Party Defendants” (as had been defined by the Receiver).

On December 4, 2023, the circuit court accepted proposed orders from all parties and, on December 6, 2023, entered the 74-page proposed order submitted by the Receiver without material change. *See Dec. 6 Order.* That December 6 Order is the basis for this current appeal. In the same December 6 Order, the circuit court denied outright the Sparrows Appellants' Motion to Dissolve and 12(b)(2) Motions to Dismiss. By later Form 4 Order entered December 15, 2023, the circuit court denied the Sparrows Appellants' 12(b)(6) & Other Motion to Dismiss. *See Tibbs Order* (filed Dec. 15, 2023). The Sparrows Appellants timely filed and served their notices of appeal on December 18, 2023, perfecting this appeal.

STANDARD OF REVIEW

“The power to appoint a receiver should be exercised with great caution” *Kirven v. Lawrence*, 244 S.C. 572, 579, 137 S.E.2d 764, 767 (1964). Questions of law—including as to the scope and interpretation of the statute governing creation, modification, and continuation of receiverships—are to be reviewed de novo. *S.C. Laws. Wkly. By & Through Dolan Publ’g Co. v. Wilson*, 423 S.C. 144, 148, 813 S.E.2d 527, 529 (Ct. App. 2018) (“Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo.” (citing *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014))). Accordingly, this Court may interpret South Carolina Code § 15-65-10 “without any deference to the court below.” *Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021).

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). The decision of the circuit court should be reversed where it is “unsupported by the evidence or influenced by an error of law.” *Id.* “At the pretrial stage, the [plaintiff’s] burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Id.*

ARGUMENT

I. The circuit court erred in continuing and modifying the Cape PLC receivership, and in creating a new receivership over a separate entity, when the appointing court had no authority to create a receivership and doing so was violative of applicable federal and state law and constitutional protections.

The circuit court committed multiple errors in finding it had authority to appoint the Receiver. First, the appointing court did not take the necessary predicate steps to create a receivership. Second, the appointing court had no legal authority or basis to create a receivership

under these factual circumstances and given the requirements of, and protections afforded by, applicable law. These issues are closely intertwined, but distinct enough that the circuit court's page-and-a-half assessment of the arguments presented to it alone could constitute reversible error. That is particularly so where the law is clear that courts should tread carefully in the realm of creating receiverships: "The taking of property from the hands of owners and placing it in the hands of a receiver has been always regarded by the courts a severe remedy to be applied with great caution" *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909).

Fundamentally, neither South Carolina nor federal law authorizes the creation of a receivership over an active foreign corporation with no assets in South Carolina. The United States Supreme Court limits the territorial authority of a receiver to the property within the state in which they are appointed. *See Booth v. Clark*, 58 U.S. 322, 331 (1854). This same limitation is found in South Carolina jurisprudence. *See, e.g., 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 restricted the creation of receiverships over foreign companies to those with **property** located within South Carolina. *See* S.C. Code Ann. § 15-65-10(4) (limiting receivership to "**property within this State** of foreign corporations" (emphasis added)). 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). As a corollary, the 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.

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, Section 33-14-320 of the South

Carolina Code 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. *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 86 (Ct. App. 2004). But that provision applies exclusively to South Carolina domestic corporations because domestic corporations, unlike foreign entities, are created by and remain within this 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)). 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 relied on the more restricted receivership provisions of Title 15, but it invoked Section 15-65-10 to impermissibly 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 in the state.

- a. **The circuit court should have dissolved the receivership after it became clear the appointing court failed to follow the process required by subsection 15-65-10(4) of the South Carolina Code.**

Subsection 15-65-10(4) of the South Carolina Code (2005) allows for appointment of a receiver “[w]hen 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 corporation.” Tracking the requirements in subsection (4), the appointing court relied on this subsection and found Cape PLC had “dissolved,” “forfeited its charter,” and “has further failed to answer this case.” *Park* Appointment Order at 1. As if mirroring the language of subsection (4) is not enough to make clear that statute was one basis for appointing a receiver, the appointing court explicitly cited **both** subsections 15-65-10(4) **and** (5) as bases for creating the

Cape PLC Receivership in *Park*. *See id.* However, the circuit court **could not** have found any ground in subsection (4) exists—Cape PLC (just like CIHL): (1) is not dissolved, (2) is not insolvent or in imminent danger of insolvency, and (3) has not forfeited its corporate rights. Notably, the circuit court chose to omit any analysis of subsection (4), but the plain language of the statute requires that for a receivership to be created over a foreign entity, it must have property in the state in addition to meeting at least one of the three bases listed that particular subsection. As conceded by the Receiver, Cape PLC has no assets in South Carolina. *See* Receiver’s “Omnibus Oppositions to Motions to Dissolve” at 18–19; Reply on Motion to Dissolve at 8. That fact alone should have rendered subsection (4) inapplicable.

But, even assuming *arguendo* subsection (4) could apply to Cape PLC or CIHL, where no property may be found within South Carolina, the Receiver’s own concessions and facts in the record—or the absence thereof—doom its applicability in this case. As to the first two bases under which a receivership may be created, they too have been conceded by the Receiver: Cape PLC has not dissolved and it is an active company, neither insolvent nor in any danger of imminent insolvency. *See* Receiver’s “Omnibus Opposition to Motions to Dissolve” at 17; Reply on Motion to Dissolve at 12. Even more so, there was **no evidence** before the circuit court that either of these grounds applied to Cape PLC or CIHL. As a result, the only basis remaining was forfeiture of corporate rights, which the Receiver previously argued supported his appointment over Cape PLC (or CIHL) based on the unadjudicated allegations of wrongdoing in his own pleading. *See* Receiver’s “Omnibus Oppositions to Motions to Dissolve” at 17.

Fatal to the Receiver’s argument is the reality that “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 incorrect and unadjudicated allegations in the *Park* Motion to Appoint and citation to Black’s Law Dictionary. A plaintiff cannot simply cite their own unproven allegations of wrongdoing to trigger the “forfeiture” clause of subsection (4)—that would make a pre-judgment receivership available in all cases rather than a “drastic remedy” for extraordinary ones. Even assuming that the reference to “forfeiture” in subsection (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, as there are none.

Likewise, Cape PLC, the entity which the appointing court put into a receivership, was never put into default. Although the circuit court clearly attempted to use default as a basis for ruling Cape PLC forfeited corporate rights, part of that issue is a result of the fact Cape PLC was **never served**, as well as the fact that the case was “**fully resolved**,” per Parks’ counsel, before the Motion to Appoint was filed nine months later. See Ex. C to Sparrows Appellants’ Motion to Dissolve. Beyond the requirement of service to initiate suit, the appointing court likewise failed to enter a default or grant a default judgment against Cape PLC (or CIHL) under the theory there were “liquidated damages.” See Ex. G to Sparrows Appellants’ Motion to Dissolve.

In the face of the foregoing, the circuit court signed the Receiver’s proposed order which dismissively and incorrectly states: “This argument reads requirements into the statute that do not exist, completely misconstruing what is required for appointment of a receiver under South Carolina law.” Dec. 6 Order at 24. Such a conclusory finding is in error because, as to both Cape PLC and CIHL, **no factual support** for the application of subsection (4) appears in the record

before this Court, was in the record before the appointing court in *Park*, or was in the record before the circuit court when it issued the December 6 Order in *Tibbs*. Having established the appointing court clearly—and without support for doing so—relied, at least in part, on subsection (4), the circuit court erred in attempting to “modify” the *Park* Appointment Order—through its December 6 Order in *Tibbs*—by retroactively asserting the sole basis for appointment was subsection (5). As set forth *infra*, this subsection (5) is also an insufficient basis here.

b. The circuit court likewise should have dissolved the receivership after it became clear South Carolina law does not support the creation of a receivership under these circumstances.

Beyond the issues with the court’s misconstruction of the actual grounds on which the receivership was created, it committed an error of law in finding a receivership could be created under subsection 15-65-10(5) of the South Carolina Code (2005). Subsection (5) allows for creation of a receivership “[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.”¹¹ Even where subsection (5) may properly be applied, unlike here, the overarching standard governing the appointment of receiverships remains the same: “The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018); *see also Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787, 788 (1934) (“This court, not only has often said that an adjudication of a receivership is a harsh and drastic remedy, one to be granted only with great caution”); *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957) (“As there said, and in other countless cases, receivership is a drastic remedy and refusal of revocation, under changed circumstances, is

¹¹ There is not one South Carolina case appointing a receiver in circumstances remotely similar to those presented here.

also drastic.”); *S. Tr. Co. v. Cudd*, 166 S.C. 108, 164 S.E. 428, 430 (1932) (“The books are full of cases holding that the appointment of a receiver is a drastic remedy and should be exercised with caution and circumspection.”).

As a fundamental matter, by erroneously relying on subsection (5), the circuit court rendered the above-discussed limitations of subsection (4) a nullity and ignored the above-quoted “**except as otherwise provided** in this Code” qualifying language of subsection (5). S.C. Code Ann. § 15-65-10(5) (emphasis added); *see also 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.”). As explained above, subsection 15-65-10(4) prohibits the creation of a receivership over an active foreign company without any property in South Carolina; therefore, this “except as otherwise” qualifier prohibits the Receiver and the circuit court from evading those subsection (4) limitations through reliance on subsection (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). South Carolina courts cannot evade strict statutory limits on foreign receiverships engrained in subsection (4) by relying on the “existing practice” provision of subsection (5). Even setting aside the irreconcilable conflict with subsection (4), this receivership is not in accordance with “existing practice.”

The December 6 Order stated—while conflating the arguments as to subsections (4)¹² and (5)—that there was “evidence of Cape’s long-running, intentional scheme to evade its tort creditors

¹² After abandoning subsection (4), the circuit court stated the order of appointment “incorrectly described Cape as ‘dissolved,’ even though Cape is still a going concern in the United Kingdom” but then—erroneously—attempted to resolve that incorrect description by stating “dissolution of the entity placed in receivership is not required under subsection (5).” Dec. 6 Order at 25, n.16.

by refusing to appear in the United States, including in South Carolina.” Dec. 6 Order at 24. In seeking to validate the appointing court’s rationale as to the “existing practice” inquiry relevant to subsection (5), the circuit court relied on *Virginia-Carolina Chem. v. Hunter*, decided in 1909. In doing so, it found that subsection (5) captures an “‘old practice’ of equity and ‘important principle of law’ to correct injustice which is particularly applicable to Cape given its efforts ‘to defeat [its] creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.’” See Dec. 6 Order at 24. The facts the circuit court found relevant to subsection (5) and warranting the receivership were that “Cape” set its “tort creditors, including the *Park* Plaintiffs, ‘at arm’s length’” and that there was a long-documented effort of Cape attempting to defraud creditors and avoid litigation such that the Receiver needed to be appointed. *Id.* Yet, there was no basis in fact or law for doing so.

In relying on the *Hunter* analysis as to the appointment of a pre-judgment receiver and the prerequisites thereof, the circuit court relied on precedent stating when a **debtor** is avoiding **creditors** through moral fraud, courts of equity can grant the necessary and appropriate relief to the **creditors**. Dec. 6 Order at 24. But, there are **no debtors** and **no creditors** here. Even more so, the *Hunter* court addressed in-depth whether the plaintiff made a prima facie showing that the party over which a receivership was sought had actively planned to dispose of property to defeat creditors. Because no such creditors existed at the time of the motion to appoint a receiver—because the case was “fully resolved”—the *Park* Plaintiffs could not have made any such showing. In apparent recognition of the futility, they made no attempt. And, in continuing and modifying the receivership, the December 6 Order failed to conduct any analysis as to whether the record established (1) “a case warranting the appointment of a receiver” or (2) “whether the plaintiff who has not yet reduced its claim to judgment has made a prima facie showing that the defendant . . .

has planned so to use and dispose of his property as to defeat the claims of his creditors.” *Hunter*, 84 S.C. 214, 66 S.E. at 179.

Close review of the history behind the “existing practice” is key to understanding why the Cape PLC receivership should never have been created in the *Park* case and certainly should have been dissolved in this case. The Supreme Court’s statement in *Hunter* as to “moral fraud” as an initial prerequisite was explicitly relying on *Miller v. Hughes*, 33 S.C. 530, 539, 12 S.E. 419, 420 (1890). In *Miller*, the Court was not even addressing receiverships, rather, it was addressing a motion to dismiss for failure to state a claim. 33 S.C. at 536, 12 S.E. at 420. The plaintiffs there—actual creditors—sought to set aside, pursuant to existing statute, a conveyance as a result of fraud. The circuit court had dismissed the complaint seeking equitable relief on the basis that all legal remedies had not been exhausted. *Id.* at 538, 12 S.E. at 422. On this narrow basis, the Court held:

It seems to us, therefore, that when a creditor files his complaint to set aside a conveyance for actual moral fraud, committed by a combination and collusion of his debtor, who is alleged to be insolvent, with third persons, the failure to allege that he has recovered judgment, and obtained a return of nulla bona on his execution issued to enforce the same, is not fatal to the complaint on demurrer.

Id. The *Miller* opinion establishes only that in suits seeking equitable relief, actual moral fraud along with insolvency will allow a court to ignore failure to exhaust legal remedies. The *Hunter* court took that proposition from *Miller*—understanding it to mean that moral fraud constitutes an exceptional circumstance—and allowed for creation of a receivership to protect **creditors**. More importantly, the *Hunter* court went on to state whether such relief could be granted **before judgment** and execution **was not a question it addressed**. 84 S.C. at 214, 66 S.E. at 179. Importantly, here, there was no judgment or execution as to Cape PLC (or CIHL) in the *Park* case when the receivership was sought nor since.

The *Hunter* court also relied on *Pelzer v. Hughes* wherein the court stated “it seems to have been reasonably well settled that, as ‘a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.’” *Pelzer v. Hughes*, 27 S.C. 408, 3 S.E. 781, 785 (1887). The *Pelzer* court went on to state “the judge had no jurisdiction to appoint a receiver, unless there was something in the case which made it exceptional” because “[c]reditors who have neither lien nor title, and have not recovered judgments, are not entitled to an injunction and receiver in a suit to set aside an assignment or pretended sale, by the debtor, of his assets.” *Id.* at 408, 3 S.E. at 785. Ultimately it was held that there was no reason to appoint a receiver, because although fraudulent conduct was alleged in the complaint, “it is remarkable that neither in the complaint, nor the affidavits submitted, was it alleged that either of them was insolvent, or that there was danger of loss or injury to the property pending the litigation.” *Id.* at 408, 3 S.E. at 786.

The circuit court appears to have been correct that subsection (5) was intended to capture the “existing practice”—however what occurred in this appointment does not, in any way, comport with any practice that **has ever** existed in South Carolina, let alone what was applied in the sole case the circuit court cited as support. Clearly, the case law at that time—and since—establishes a receivership in ongoing litigation requires exceptional circumstances that do not exist here as to either Cape PLC or CIHL. These circumstances must be both properly pled and proven due to the harsh nature of a receivership as a remedy. Moreover, case law involving receiverships requires **actual creditors**. This much is consistent in *Hunter*, *Miller*, and *Pelzer* and is missing here.

The circuit court also cited its own creation of receiverships as “evidence” of the “existing practice.” Dec. 6 Order at 25.¹³ Those very receiverships have likewise been premised on a misinterpretation of the law as to when, unlike here, a receivership is appropriate. This Court’s own docket is replete with evidence that the practice of appointing receivers in this manner is decidedly *not* the existing practice. *See, e.g., Frink v. Nat’l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) (“That a receiver has no extra territorial authority is too well settled to require the citation of authority.”); *Pollock v. B.&L. Ass’n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) (reciting that “a receiver has no extra territorial power of official action, none of 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”; “[r]eceivers appointed by one jurisdiction are not entitled as of right to recognition in other jurisdictions, and courts of equity cannot acquire extra territorial jurisdiction over property by appointing receivers”; and “[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him”). Under circumstances constituting “total failure of any proof that [a foreign corporation] has property in this state,” our South Carolina Supreme Court has dissolved receiverships. *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936). The same should occur here.

There are no known creditors of Cape PLC (or CIHL) in South Carolina—instead the Receiver assumed their existence as a legal fiction. The *Park* Plaintiffs **never obtained a judgment** against Cape PLC (or CIHL) before advising the Court their case was “fully resolved.”

¹³ In this regard, the circuit court also cited the creation of a receivership over the assets of Richard Alexander Murdaugh in another pending case. Dec. 6 Order at 25. A key distinction between what has been done here and Murdaugh and other legitimate receiverships created under exceptional circumstances warranting such a “drastic remedy,” is that South Carolina courts can properly—consistent with due process—exercise personal jurisdiction over them.

See Exs. C–E & G to Sparrows Appellants’ Motion to Dissolve. The *Tibbs* Plaintiffs likewise have **no judgment**. Yet, the Receiver seems determined to appear adverse to and hold liable the Sparrows Appellants and the other Third-Party Defendants, undermining Cape PLC—the entity which he is duty bound to defend and “protect its interest”—at every turn along the way. Not only did the Receiver characterize his mission as bringing about “a day of reckoning” in the Third-Party Complaint, but his actions in affirmatively waiving defenses available to Cape PLC—such as those now being asserted by the Sparrows Appellant herein and in the record before the court below—can only be seen as proof of a lack of impartiality and is unrecognizable as compared to the intended purpose of a receivership.¹⁴ While all of this information was properly before the circuit court, the circuit court refused, in error, to dissolve the Cape PLC receivership.

Acting as a trustee of the company over which he has been appointed, a receiver is responsible to the court and to the company’s creditors. *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217–18, 118 S.E. 303, 304 (1923). But without a judgment, a plaintiff is not a creditor, and South Carolina law requires a receiver to be “entirely impartial,” forbidding a receiver from acting as “one of the agents of the plaintiff.” *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. at 224, 66 S.E. at 180. With a clear understanding of that rule, the Receiver stated himself in his pleading that he sought a “reckoning” of the party he was appointed to represent and protect. In fact, the allegations in the Third-Party Complaint—as accepted by the circuit court—would render each Third-Party

¹⁴ This lack of required impartiality is evident from the Receiver’s own pleading and has been equally clear since. For example, during the October 25, 2023 hearing from which the circuit court later issued the December 6 Order on appeal, the Receiver stated his purpose is to hold Cape PLC and CIHL “to account for the first time in over 50 years,” stating “[t]hey haven’t even been in a courtroom in the United States, and here we are because a receiver got appointed.” Oct. 25 Hr’g Tr. 27:5–8. He continued: “And they’re being held to account now in this courtroom via the receiver.” *Id.* at 28:16–17; see also *id.* at 37:24–25 (“If South Carolina is not going to do it [through the receivership] . . . who is?”).

Defendant *a part of Cape PLC*. The direct result of this would be the Receiver owes the duty to protect the Sparrows Appellants, rather than pursuing a “reckoning” against them.

For each of these reasons, to appoint a receiver over an active, ongoing company that has never conducted business in South Carolina, has a principal place of business in a foreign country, was never served with process, was never served with the Motion to Appoint the receiver, and never had a chance to contest the receivership violates subsection (5) of the applicable statute and, as discussed below, protections afforded by the United States and South Carolina Constitutions. The circuit court should have found the appointment of the Receiver over Cape PLC (or CIHL) was in error. But, because of a misconstruction of the existing practice under Section 15-65-10(5) of the South Carolina Code and disregard for the evidence put forth before the court, the circuit court erroneously modified the basis on which the receivership was created, continued it without legal basis to do so, and, in effect, created an entirely new receivership.

c. Under these circumstances, the receivership appointment violates the United States and South Carolina Constitutions and federal law.

Here, allowing the receivership to proceed in these circumstances would contravene the Commerce Clause, the Dormant Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, and the Equal Protection Clause of the U.S. Constitution. The circuit court’s rulings in its December 6 Order ignore the concept of interstate and intrastate commerce being reserved to the federal government, not the states. *See, e.g., Travelscape, LLC v. S.C. Dep’t of Revenue*, 391 S.C. 89, 104, 705 S.E.2d 28, 36 (2011) (“Even in the absence of Congressional regulation, the negative implications of the Commerce Clause, often referred to as the Dormant Commerce Clause, prohibit state action that unduly burdens interstate commerce.”). The circuit court has no authority or jurisdiction outside of South Carolina, yet it construed subsection 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.” Dec. 6 Order at 24. 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 S.C. Code Ann. § 15-65-10 violates the Commerce Clause and Dormant Commerce Clause and is an error of constitutional significance. *See, e.g., Star Sci., Inc. v. Beales*, 278 F.3d 339, 355 (4th Cir. 2002) (“[A] State may not regulate commerce occurring wholly outside of its borders.”).

Moreover, approval of this conduct—initiated and continued without proper notice to Cape PLC (or CIHL) and now being used to bring claims against non-resident entities, such as the Sparrows Appellants, that are beyond the circuit court’s jurisdiction—violates the Due Process, Equal Protection, Takings, and Excessive Fines Clauses of the U.S. Constitution. Taken at face value, the *Park* Appointment Order relies on a single non-appearance in that 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, *inter alia*, control of the affairs of an entire foreign company, dispose of its foreign assets, concede liabilities, control the defense of the company in South Carolina for all time, and sue foreign third parties on its behalf. This state action implicates the constitutional rights of both the entity in receivership and the targets thereof.

Particularly in the absence of any civil judgment or criminal conviction, this receivership runs afoul of the Takings Clause. The circuit court 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); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984). 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. 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. *See, e.g., 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”). This receivership also violates procedural due process. “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). As referenced above, and as more discussed below, there was no notice here, much less fair notice.

This pre-judgment 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.* The purported pre-judgment 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 (or CIHL's) alleged non-appearance in the *Park* lawsuit, without even an entry of default or a default judgment.

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 as the equal protection analysis: whether the challenged law is rationally related to a legitimate state purpose. *Id.* at 875; *see also Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 487–88 (1955). The abuse of South Carolina's receivership statute to seize a foreign company's assets on a pre-judgment basis, strip away its ability to defend itself, and then redistribute those assets in this state lacks the legitimacy required by the law. The order should be vacated accordingly.

II. The circuit court erred in continuing and modifying the Cape PLC receivership, and in creating a new receivership over a separate entity, in light of the numerous unremedied deficiencies underlying the appointment.

The circuit court's December 6 Order is unsupported by the evidence and is in error as to the law to be applied—each of which, independently, presented a basis for dissolution and now present a basis for reversal. Issues of defective service in *Park* render the proceedings so deficient that the circuit court could not have validly created a receivership. In the December 6 Order, the circuit court incorrectly found: (a) “The Proper Entity Was Served; (b) “Both the Summons and Complaint Were Served on Cape”; and (c) “The Amendment of the Complaint Does Not Render Service Ineffective.” *See* Dec. 6 Order at 16, 20. Each of these findings, as set forth below, is wholly unsupported in the record and is founded on inapplicable law of “misnomer.”

The circuit court retroactively modified its order in *Park* appointing the Receiver over Cape PLC—an entity that was never served with any *Park* pleading and never received notice of the

Motion to Appoint a receiver over it—in multiple ways by simply dismissing numerous errors and stating its terms meant something other than their clear and plain meaning. In resorting to the below erroneous findings to deny the Sparrows Appellants’ Motion to Dissolve, the circuit court in *Tibbs* retroactively modified its *Park* Appointment Order to allow the Receiver to now act on behalf of CIHL, an active, foreign legal entity altogether separate from Cape PLC and which was never mentioned in the Motion to Appoint and is not named in the underlying suit in *Tibbs*. This substantive modification and continuation of the Cape PLC receivership—the effect of which is the creation of an entirely new receivership over CIHL—is in error, especially when this action is considered in light of the fact the remedy of receivership is “harsh and drastic” and must be treated “with great caution.” *Towles v. S.C. Produce Ass’n*, 187 S.C. 290, 295, 197 S.E. 305, 307 (1938).

a. The circuit court improperly conflates two distinct entities, Cape PLC and CIHL, by using an inappropriate “now known as” identifier and by applying inapplicable and distinguishable law on “misnomer.”

The Sparrows Appellants offered, as one basis for dissolution of the receivership, the fact that in *Park*, Cape PLC was never served with any summons and complaint. The December 6 Order confuses and conflates on which entity’s behalf the Receiver is acting. In addition to naming CIHL, the *Park* Plaintiffs separately named “Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd.” as a defendant. Dec. 6 Order at 3. But the allegation as to Cape PLC was demonstrably incorrect; Cape PLC is not a successor-in-interest to Cape Asbestos Company Ltd. Cape PLC was formed in 2011 as a Jersey company, as shown by Jersey’s public company database. See Ex. H to Sparrows Appellants’ Motion to Dissolve. As is likewise obvious from the U.K.’s company information database, Cape Asbestos Company Ltd. is a separate entity that now for more than a decade has been legally named and known as CIHL. See Ex. F to Sparrows Appellants’ Motion to Dissolve.

Rather than seeking a receivership over CIHL—an entity they had named in their suit and which appears to be the true successor to the entity the *Park* Plaintiffs and the Receiver allege brought asbestos to the United States—the *Park* Plaintiffs sought and obtained a receivership over Cape PLC, an entity they separately named but which had **never been served**. Although separately named in *Park*, CIHL was not referenced in either (1) the motion seeking appointment of a receiver over Cape PLC or (2) the order appointing a receiver over Cape PLC.

As the Receiver and circuit court later realized, having a receivership over any entity other than CIHL would be fatal to all of the claims in the Third-Party Complaint given the allegations of historical mining, distribution, and sale of asbestos during periods predating the formation of Cape PLC in Jersey by decades. So, in an attempt to remedy the substantive omission from the *Park* Appointment Order, the circuit court improperly modified the appointment by connecting and conflating two wholly disparate companies together with an “n/k/a” acronym. *See* Dec. 6 Order at 18. While the Receiver acknowledged that Cape PLC was never served with anything in Jersey, the Receiver argued that the circuit court could swap the name CIHL for Cape PLC and retroactively rewrite the *Park* Appointment Order. *See* Receiver’s “Omnibus Oppositions to Motions to Dissolve” at 17, n.13; 20, n.15 (stating that the court could “simply amend the Appointment Order to clarify” and that the “Receiver would have no objection to the Court’s amendment of the Appointment Order to identify” [CIHL]). The public record—cited above—makes clear that CIHL at no time dissolved, nor was the Motion to Appoint ever addressed or proved served upon CIHL. The *Park* Plaintiffs merely sought and obtained a receiver over one entity: Cape PLC.

That entity was **not served** with any pleading or motion to appoint a receiver in *Park*. Yet, when the circuit court appointed the Receiver over Cape PLC, it relied, in part, on the fact Cape

PLC had never responded to the complaint in *Park*. See *Park* Appointment Order at 1. The findings in the circuit court’s December 6 Order in this regard are clearly erroneous, for wholly ignoring the evidence in the record *and* for failing to place the burden on the correct party—the Receiver.

Compounding its errors, the circuit court regarded the improper use of a “formerly known as” conflating Cape PLC with CIHL—the true successor to the “Cape” entity referenced in the pleadings—as merely “misnomer.” Dec. 6 Order at 19. While it correctly states the law in South Carolina—“that a misnomer does not render service ineffective”—what occurred here is decidedly *not* misnomer. The circuit court cited *Griffin v. Capital Cash*, 310 S.C. 288, 290, 423 S.E.2d 143, 145 (Ct. App. 1992), to support its proposition that this is a case of misnomer; but, a review of *Griffin* reveals a case in which four corporations had an interest in the case, while the “Capital Cash” entity was connected to only one of them. 310 S.C. at 291, 423 S.E.2d at 145. The Court there noted the complaint was mailed to Capital Cash and was then forwarded to the entity it was connected to, but noted that when a corporation is “known by several names” (e.g., through a d/b/a, a trademark, or a service mark), then “[i]f it is sued in a name under which it transacts business, the process will ordinarily be sufficient to bring it before the court.” *Id.* at 292, 423 S.E.2d at 146.

South Carolina law is well-settled on this point—misnomer has to do with mistaken names as to one entity that transacts business under multiple names. See *McCall v. IKON*, 363 S.C. at 651, 611 S.E.2d at 317 (applying same rules where a named entity argued a division of its business could not be sued). Cape PLC and CIHL are, in contrast to the law of misnomer, separate and distinct entities. Misnomer does not apply when two entirely different entities are used interchangeably by plaintiffs, the court, and the Receiver to overcome issues that should be otherwise dispositive. See *Long v. Carolina Baking Co.*, 193 S.C. 225, 239, 8 S.E.2d 326, 332

(1939). The circuit court’s retroactive, substantive modification of the circuit court’s order in *Park* and creation of a new receivership, based on facts that do not exist in the record and are contradicted by readily available public information, is error enough to warrant dissolution under the applicable standard of review.

b. The Receiver failed to show any *Park* complaint was ever served on Cape PLC (or CIHL).

Outside of the ignored factual evidence on the defective service as to an **incorrect** entity, Cape PLC was not actually served with any complaint. The circuit court’s finding that service on Cape PLC was proper under the South Carolina Rules of Civil Procedure is incorrect. It relied on the fact that an affidavit of a process server stated the “First Amended Summons” was served, via Royal mail, **to an address for CIHL**, and that the “affidavit indicates that the service copies were contained in an oversize envelope, with a large-letter stamp, indicating sizeable contents, rather than just a couple sheets of paper.” Dec. 6 Order at 18. That grossly misconstrues the required burden of showing that the **complaint**, and not just the summons, was served on the **proper entity**. Rules 4 and 4.1 of the South Carolina Rules of Civil Procedure govern service of process for cases in South Carolina state courts and require that the summons and complaint be served together. Rule 4(d), SCRPC. Both rules require plaintiffs to file proof of service as to the summons and complaint so that a court can evaluate whether it actually has jurisdiction over a defendant. Rule 4(g), SCRPC; Rule 4.1(c), SCRPC. “To establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process.” *McCall*, 363 S.C. at 652, 611 S.E.2d at 317. Conversely, where a plaintiff is unable to show compliance with the rules, the court cannot presume proper service. *See id.* (“When these rules are followed, there is a presumption of proper service.”).

The Public Index in *Park* contains pages of entries, but no indication Cape PLC or any other entity potentially within the undefined scope of the phrase “Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates” was ever properly served with legally sufficient process. Yet, the circuit court clearly relied on the limited averment of service of a **summons** on a different legal entity, thereby requiring the Sparrows Appellants—and all the other Third-Party Defendants—to disprove an assertion in the Third-Party Complaint and improperly shifting the burden away from the Receiver. Dec. 6 Order at 18. Similarly, the circuit court stated, “The process server also indicated that he emailed materials to an official address affiliated with Altrad and designated for the receipt of asbestos-related claims against Cape (elclaimsaltraduk@altrad.com)” ignoring the fact that such emails—whether attempted or actually received—are insufficient to effect service of process and the fact that the email address itself indicates it is for employment liability (“el”), and not asbestos, claims.

Thus, the Receiver failed to provide the circuit court with sufficient proof of proper service. Because lawful service and Cape PLC’s “status” as alleged successor-in-interest to Cape Asbestos Company Limited were procedural predicates to the appointing court’s order creating the receivership, the circuit court should have accepted the facts before it and dissolved the Cape PLC receivership. It erred by not doing so. This Court should reverse the circuit court’s finding that Cape PLC (or CIHL) was served with a copy of the *Park* complaint as required.¹⁵

¹⁵ In addition, neither Cape PLC and CIHL were ever served with the operative complaint—the Second Amended Complaint in *Park*. “When an amended pleading is filed, it essentially operates as a waiver of the original pleading. The original pleading ceases to perform any office as a pleading and no longer performs any function in the case.” See *e.g.*, 71 C.J.S. *Pleading* § 466. Upon filing of the Second Amended Complaint—which was never served, but filed before any deadline passed to respond to the preceding pleading—the First Amended Complaint became a legal nullity. See *Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 452 (4th Cir. 2017).

c. Cape PLC never received notice of the Motion to Appoint a Receiver in *Park*.

In addition to the fact Cape PLC was never served with any complaint in *Park*, Cape PLC never received notice of the Motion to Appoint. South Carolina law is unequivocal as to this requirement the *Park* Plaintiffs failed to satisfy. Section 15-65-20 states:

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.

Pursuant to this statute, the *Park* Plaintiffs were required to give “notice of the application for such appointment” to the party who is to be put into a receivership—here, Cape PLC. This notice requirement is clear and unambiguous. Likewise, it is undisputed such notice never occurred with respect to Cape PLC. Notwithstanding, the circuit court generically ruled the record “indicates notice was given.” Dec. 6 Order at 22. Having no support in the record, the circuit court’s conclusory and unsupported finding is clear error. The facts are simple as to notice: there is no proof of service of the Motion to Appoint showing lawful service on Cape PLC. In fact, despite the motion representing to the Court that “Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected,” no proof thereof has been offered and the only address to which the non-operative, “First Amended Summons,” was averred to have been mailed was not the address of Cape PLC in Jersey. Contrary to what the December 6 Order states, there was, and is, no such “evidence” in the record—only a passing, non-descriptive, and insufficient remark from counsel

for the *Park* Plaintiffs. *See, e.g., Landry v. Landry*, 430 S.C. 153, 163, 843 S.E.2d 491, 496 (2020) (reiterating “it is well settled that statements by counsel are not evidence”).

In the face of these cascading errors, the allegations by Park’s counsel that (a) Cape PLC is “dissolved,” (b) Cape PLC has “forfeited its charter,” (c) Cape PLC is the successor-in-interest to the Cape Asbestos Company Limited, and (d) Cape PLC was lawfully served in the *Park* lawsuit (with the required pleadings and the motion seeking appointment), were not supported—and were expressly contradicted—in the record. As a result of the overwhelming evidence to the contrary, the circuit court should have dissolved the Cape PLC receivership, and the failure to do so constitutes reversible error.

d. No sufficient proof of service on CIHL of the Motion to Appoint in *Park* was offered.

Setting aside the legal issues as to the circuit court’s use of a “n/k/a” to conflate Cape PLC and CIHL, the proceedings as to CIHL are nonetheless defective. As referenced above, in the face of the Section 15-65-20 statutory notice requirement, the Plaintiffs in *Park* have not offered sufficient proof of compliance therewith as to CIHL; they merely offer what had been in a footnote to the Motion to Appoint from the start—that they had placed “a copy of this motion and its exhibits” in the hands of DHL for delivery to a non-specific “address.” Moreover, CIHL was in no way mentioned in the Motion to Appoint, and no evidence was put into the record that CIHL ever received any notice its assets were subject to the *Park* Appointment Order or as to the December 6 Order in *Tibbs* modifying the Cape PLC receivership. In reliance on the fact Cape PLC was an active company—separately named as a defendant in *Park*—CIHL had no reason to believe a motion to appoint a receiver over Cape PLC would in any way apply to CIHL. Accordingly—independent of all the other reasons stated herein—the circuit court erred in finding

the Motion to Appoint was served on CIHL as required by the statute controlling the requirements for the creation of a receivership.

III. The circuit court erred in finding it could properly exercise personal jurisdiction over the Sparrows Appellants under theories of amalgamation, single-business enterprise, and alter ego.

The issue of personal jurisdiction is inextricably intertwined with the propriety of the receivership. 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 United States Constitution. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005).¹⁶ The circuit court committed error under South Carolina common law, the South Carolina Constitution, and the United States Constitution when it found it could properly exercise personal jurisdiction over the Sparrows Appellants. See *generally* Dec. 6 Order. Instead of complying with the traditional precepts of applicable law as to the exercise of personal jurisdiction, the circuit court did exactly the opposite. In broad strokes—not individualized as to each party and without specific, nonconclusory facts as to the “minimum contacts” each has to South Carolina—the circuit court ruled “the Receiver has made the requisite prima facie jurisdictional showing for personal jurisdiction under an alter ego theory, guiding light, and/or single business enterprise theory, and/or have purposefully availed themselves to the jurisdiction of this Court” Dec. 6 Order at 37. And, in basing its findings on such theories, the court disregarded the general and specific personal jurisdictional standards and jurisprudence

¹⁶ As discussed above, the circuit court incorrectly treated 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). The South Carolina receivership statute, on its face, is limited to domestic assets of a defunct foreign corporation; the Receiver has no authority to pursue claims against foreign entities and persons over whom the circuit court has no personal jurisdiction in order to seize foreign assets.

compiled pages earlier, *id.* at 26–28, and bypassed the focus of the Receiver’s pleading as to the nature of the relationship between Cape PLC and the Sparrows Appellants, transmuting the allegations—without a pleading amendment—into findings of an alter-ego and single-business-enterprise relationship between the Sparrows Appellants and Appellants AIA and Mr. Altrad. *Compare, e.g., Tibbs Third-Party Complaint* at 62–63 (focusing on relationship between Cape PLC and the Third-Party Defendants) *with* Dec. 6 Order at 47–50 (focusing on relationship between the Sparrows Appellants and AIA/Mr. Altrad).

This Court must reverse the circuit court’s findings—which are unsupported by the evidence and by applicable law, are influenced by errors of law, and violate state and federal constitutional due process protections—and remand this case with instructions that Sparrows Appellants be dismissed with prejudice.

a. Applicable law does not support the exercise of general or specific jurisdiction over the Sparrows Appellants.

In the proceedings below, the Receiver had, and failed to satisfy, the burden of making a prima facie showing of direct personal jurisdiction over the non-resident Sparrows Appellants. *See, e.g., Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008) (noting burden is on party seeking to invoke personal jurisdiction over a non-resident defendant); *see also Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) (requiring a prima facie showing of jurisdiction, based “upon the facts of [the] particular case,” to satisfy burden); *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327–28, 594 S.E.2d 878, 882 (Ct. App. 2004) (“At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” (citations omitted)).

Contrary to the circuit court’s findings on the record before it, this burden cannot be met by merely reciting—as occurred here—underlying statutes or legal principles, nor can it be met by broad and conclusory general statements. *See, e.g., Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (finding that mere recitation of underlying statute or legal principle was “insufficient to support a finding of personal jurisdiction . . . even with a liberal construction of the statute and the complaint”); *Magic Toyota, Inc. v. Se. Toyota Distribs., Inc.*, 784 F. Supp. 306, 310 (D.S.C. 1992) (requiring showing of “specific facts set forth in the record” for personal jurisdiction to exist). Contrary to the circuit court’s findings, this burden cannot be met by citations to the unilateral actions of some other entity or group of entities. *See Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (“[U]nilateral activity of another party or a third person is not an appropriate consideration . . . ”)).

As recognized by the circuit court, “[p]ersonal jurisdiction is exercised as either ‘general jurisdiction’ or ‘specific jurisdiction,’” and “[t]he exercise of personal jurisdiction under either . . . must comport with due process requirements and must not offend traditional notions of fair play and substantial justice.” *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007) (detailing traditional principles of general and specific personal jurisdiction to be determined under S.C. Code Ann. §§ 36-2-802 & -803); *see also Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023) (“Due 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.” (citations omitted)).

When conducting the required “minimum contacts analysis” relative to specific jurisdiction, the circuit court must find that the defendant at issue “directed its activities to a

resident of this State” and further that “the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992); *see also Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 (clarifying that the “minimum contacts analysis” must focus on the defendant’s own actions and connection with the forum state and not on the “unilateral actions of some other entity”). Without minimum contacts, a court does not have the “power” to adjudicate the action over such defendant. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. If the Court finds minimum contacts exist, it must then determine whether the exercise of jurisdiction is “reasonable” or “fair” by considering: “(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.* at 492, 611 S.E.2d at 508.

Although the circuit court referenced these very same principles and many of these same authorities in a cursory manner, it erred by not applying them to find a lack of both general and specific personal jurisdiction over the Sparrows Appellants or otherwise recognizing that the Receiver had abandoned¹⁷ such arguments altogether. Instead, as to general personal jurisdiction, the court below simply noted—in a footnote—that “[b]ecause the Receiver’s response to the Personal Jurisdiction Motions focused on establishing specific jurisdiction, the Court likewise focuses its discussion on specific jurisdiction.” Dec. 6 Order at 27–28, n.17. Similarly, as to specific personal jurisdiction, the December 6 Order includes none of the required specific and

¹⁷ As explained in the Sparrows PJ Proposed Order, at 15, by solely arguing that personal jurisdiction may be exercised over the Sparrows Appellants via theories of alter-ego and single-business-enterprise, the Receiver abandoned and waived any assertion that the court below could exercise personal jurisdiction over the Sparrows Appellants through traditional principles of general and direct specific personal jurisdiction.

non-conclusory “minimum contacts” findings that: (i) any of the Sparrows Appellants directed activities to a South Carolina resident; (ii) the claims of the Receiver (or the underlying *Tibbs* Plaintiffs) arise out of or relate to those activities of the Sparrows Appellants; and (iii) that it would be fair and reasonable to exercise jurisdiction over the Sparrows Appellants considering the absence of activity by them in this state, the character and circumstances of their acts, the inconvenience resulting to them by a conferral of jurisdiction, and the state’s interest in exercising jurisdiction. *See* Dec. 6 Order at 71–73 (focusing on the actions of “Cape” and the Third-Party Defendants en masse and without any acknowledgment that, as discussed below, the alleged “bad acts” occurred decades prior to the Sparrows Appellants’ formation and later acquisition and in an industry in which they have never participated and from which they derive no benefit).¹⁸

These required specific and non-conclusory findings as to the Sparrows Appellants were not made in the December 6 Order because they are not supported by the record, including the allegations in the Receiver’s own pleading and the facts referenced in the Sparrows Appellants’ affidavits properly before the circuit court. As pled by the Receiver in his Third-Party Complaint (at 54) and as found by the circuit court in the December 6 Order (at 48), the Sparrows Appellants were each acquired by AIA (not Cape PLC or any other “Cape” entity) on **July 11, 2022**. Several years prior to this mid-2022 acquisition, on **October 9, 2017**, through a public tender, Altrad UK

¹⁸ Even as to the alter-ego and single-business-enterprise theories the Receiver attempts to use to support personal jurisdiction in circumstances where jurisdiction would not otherwise be found, as more fully described hereinafter, the circuit court likewise erred by relying on broad, conclusory statements, recitations of legal principles, and citations to unilateral actions of other. *See, e.g.*, Dec. 6 Order at 26–35 (recitation of legal principles); *id.* at 48–50 (unilateral actions of others, including Appellants AIA and Mr. Altrad, the unrelated and unaffiliated entities named “The Sparrows Group LLC” and “Sparrows Offshore Group Ltd., and “Cape”); & *id.* at 71–73 (broad, conclusory statements).

(a wholly-owned subsidiary of AIA) completed the acquisition of Cape PLC, which prior thereto, was a publicly traded company on the London Stock Exchange.

As pled, the primary conduct for which the Receiver seeks his “reckoning” occurred between **1953** and **1978**, the period during which the North American Asbestos Company (“NAAC”) was in existence and was alleged to have been utilized to facilitate an “asbestos scheme.” *Tibbs Third-Party Compl.* at 35–46. To be clear, the cessation of NAAC and the conduct alleged pre-dates the very existence of the Sparrows Appellants by multiple decades, as the Sparrows Appellants were formed, in **Delaware**, in the twenty-first century: Sparrows Offshore in **2003**; ArranCo in **2008**; and Hawk Bidco in **2012**. See Exs. A to Sparrows Appellants’ 12(b)(2) Motions to Dismiss. They do not maintain their registered office or principal place of business in South Carolina. Instead, from its out-of-state principal place of business, Sparrows Offshore is in the crane business, while ArranCo and Hawk Bidco are holding companies. See *id.*; *Tibbs Third-Party Compl.* at 15, 55. Accordingly, the horizontal relationship—established in **mid-2022**—between the newly formed Sparrows Appellants and Cape PLC (and CIHL) is akin to cousins, several times removed, by virtue of recent adoption, who have never met—including given the geographic separation of the Atlantic Ocean and the fact that they participate in unrelated lines of business—but who happen to be able to trace their lineage through many tiers of a family tree, not to South Carolina, but to France.

These clear, basic, and undisputed facts in the record should have been dispositive as to personal jurisdiction over the Sparrows Appellants, as: **none** of them were formed in South Carolina; **none** of them have their principal place of business in South Carolina; and **none** of them have any affiliation with South Carolina, let alone such “continuous and systematic” contacts as to render them “essentially at home” here in South Carolina or the “minimum contacts” otherwise

necessary for the circuit court to have the “power” to adjudicate the action over them in circumstances where it would be “reasonable” and “fair” to do so. By not making any specific, non-conclusory findings in these regards as to the Sparrows Appellants, it is clear neither the Receiver nor the circuit court itself believed any “traditional basis” for personal jurisdiction exists over the Sparrows Appellants. Instead, the Receiver has attempted to fit square-block facts in the record into the round-hole of “other equitable grounds for exercising personal jurisdiction.”¹⁹ They do not fit, and, as discussed below, the circuit court erred by finding otherwise.

b. The Sparrows Appellants are not alter egos to Cape PLC (or any other person or entity) and are not engaged in a single-business or amalgamated enterprise.

i. Circuit court findings.²⁰

¹⁹ As with general personal jurisdiction, and notwithstanding that a cause of action has been styled under such basis, the Receiver has not advanced any argument and has now abandoned any assertion that personal jurisdiction may be exercised over the Sparrows Appellants via a piercing-the-corporate-veil theory. See Sparrows PJ Proposed Order, at 19.

²⁰ In its December 6 Order, the circuit court relied on two affidavits the Receiver had filed containing no actual facts specific to the Sparrows Appellants (or any of the other Third-Party Defendants), but filled with improper legal opinions and conclusory pronouncements on the state of the law in South Carolina and the findings the circuit court should reach based on the allegations in the Receiver’s pleading. One such affidavit stated definitively that all of the 33 originally named Third-Party Defendants were properly in the case, although soon after being presented, 11 of which were thereafter voluntarily dismissed by the Receiver (i.e., one-third of the entities the affidavit claimed were legitimately sued). It was error for the circuit court to have considered those affidavits in rendering its findings. Compare, e.g., Dec. 6 Order at 37–38, 73 (“The Third-Party Complaint, along with the submitted affidavits . . . , adequately alleges facts sufficient to support the exercise of personal jurisdiction”) with *State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (Toal, C.J.) (“[E]xpert testimony on issues of law is usually inadmissible.”); *Dawkins v. Fields*, 354 S.C. 58, 65–67, 580 S.E.2d 433, 436–37 (2003) (affirming trial court refusal to consider an expert affidavit filed in response to a summary judgment motion where the affidavit largely contained only legal opinions and conclusions). The legal question of jurisdiction, relative to the equitable claims asserted, is not one of the rare instances where expert testimony on legal questions might be permissible so as to “assist the jury.” See *State v. Morris*, 376 S.C. 189, 205, 656 S.E.2d 359, 367 (2008) (finding such assistance to the jury, under the particular facts of that case, as determinative and distinguishable from cases excluding expert legal opinion testimony).

As to the Sparrows Appellants and others in a group designated as the “Altrad Third-Party Defendants,” the circuit court ruled it could exercise personal jurisdiction “under an alter ego, guiding light, and/or single business enterprise theory.” Dec. 6 Order at 38. Simply adopting the conclusory allegations in the Receiver’s pleading—and disregarding the affidavits and specific facts offered by those in opposition—the circuit court made the following findings to support its conclusion that a prima facie showing was made that each of the Sparrows Appellants is an alter ego of Cape PLC: (i) Appellant AIA acquired the “Sparrows Group”²¹ in mid-2022; (ii) “Cape” and the Sparrows Appellants share common ownership; and (iii) both are controlled by AIA, including as to the selection of the corporate leadership for each. See Dec. 6 Order at 47–48.

The circuit court went on to find the Receiver made a prima facie showing under the single-business-enterprise theory. To support its finding, the circuit court referenced unspecified documents to find that the Sparrows Appellants are part of a scheme to “insulate capital from

²¹ The Receiver tries to make much out of the non-response of an unrelated Third-Party Defendant, “The Sparrows Group, LLC,” to support his alter-ego and single-business-enterprise theories. Even if this unilateral act or omission of a separate legal entity were appropriate for consideration as part of a jurisdictional inquiry, which it is not, the filings in the record indicate that such entity was not properly served with process. The Receiver’s Proof of Service for this entity, filed August 28, 2023, along with a styled “Proof of Delivery,” asserts that this entity was served, on July 26, 2023, through its purported Registered Agent, Corporation Service Company, located at 1209 N Orange Street, Wilmington, DE 19801. See Ex. D. to Sparrows Objections to Receiver’s Proposed Order. However, the Delaware Secretary of State records indicate that this particular entity utilizes the corporate registered agent services of “Harvard Business Services, Inc.,” located at 16192 Coastal Hwy., Lewes, DE 19958. See Ex. E. to Sparrows Objections to Receiver’s Proposed Order. Accordingly, this separate, unrelated entity’s non-response is inconsequential. Plus, even if properly served, the use of the “Sparrows Group” as a marketing moniker for a group of entities does not create any connection between the Sparrows Appellants and another limited liability company entity bearing a legal entity name of “The Sparrows Group LLC.” That is particularly so in this instance where official Delaware records reflect that “The Sparrows Group LLC” was created in March 2023. See *id.* It is both a legal and factual impossibility for AIA or any other Altrad entity to have acquired The Sparrows Group LLC in mid-2022 where that entity was not created until March 2023, all as recognized in the December 6 Order (at 48, n.29).

American creditors” as evidenced by the unilateral liquidation of an unrelated entity²² shortly after service of the Third-Party Complaint. *Id.* at 50. Tied to vague, undefined “concerns regarding ongoing bad faith, abuse, fraud, wrongdoing, or injustice being perpetuated by and within the Altrad Group,” the circuit court continued by noting a “concern that certain affiliates of these Altrad Group members”—but not the Sparrows Appellants themselves—share a “common registered address with Cape,” neglecting the fact entire, legitimate businesses exist around the world for the sole purpose of providing registered agent services (and physical address) for thousands of entities. *Id.* Disregarding the recency of the Sparrows Appellants’ corporate acquisition; the fact that, since their formation, they have never participated in the asbestos industry; and a complete absence in the record of any fact indicating they have received any benefit whatsoever from an attenuated, horizontally related entity or that any creditors exist, the circuit court concluded by finding that it could exercise personal jurisdiction over the Sparrows

²² The Sparrows Appellants have repeatedly disclaimed relation to this particular entity, Sparrows Offshore Group Ltd. As explained in the Sparrows Objections to Receiver’s Proposed Order (at 19), the readily accessible and public U.K. government records confirm the Sparrows Appellants’ disclaimer of affiliation, as Sparrows Offshore Group Ltd. is owned by Hawk Caledonia LP, which is in turn owned by Dr. John Luis Garcia (i.e., not AIA, Mr. Altrad, or any other Altrad entity). See Ex. C. to Sparrows Objections to Receiver’s Proposed Order. The only reasonable inference to be made from such government records is that, unlike these Sparrows Appellants, this Sparrows Offshore Group Ltd. entity **was not** purchased by AIA (or any other Altrad entity) in mid-2022 and, therefore, has never had any relationship—distant or otherwise—with Cape PLC, CIHL, AIA, Mr. Altrad, or any Altrad entity. The Receiver confirmed this reality by submitting, on December 4, 2023, for the circuit court’s consideration, the 2022 year-end financial statements for an unnamed entity, Sparrows Offshore International Group Limited, which at the very end explains: “**Until 11 July 2022** Hawk Caledonia LP, a limited partnership incorporated in Scotland, was the ultimate parent undertaking and controlling party.” (Emphasis added). That is, until the mid-2022 AIA acquisition, Hawk Caledonia LP—as then and current remaining parent of Sparrows Offshore Group Ltd.—was a part of the “Sparrows Group”; however, as of and since the mid-2022 AIA acquisition, Hawk Caledonia LP and its remaining subsidiary, Sparrows Offshore Group Ltd., have become and remained separate entities with no current relation or affiliation to these Sparrows Appellants, AIA, Mr. Altrad, any other Altrad entity, Cape PLC, or CIHL.

Appellants “as an alter ego to Cape or, in the alternative, as part of a single business enterprise that collectively endeavored to sell, or benefit from the sale of Cape’s asbestos in the United States, including South Carolina, while avoiding answering to U.S. creditors for the resulting harm.” *Id.* This is error under either theory.

ii. Errors as to alter ego.

The circuit court’s summary finding that the Third-Party Complaint made the requisite showing as to personal jurisdiction over the Sparrows Appellants pursuant to the alter-ego theory is wrong.²³ To have done so, the Receiver was required, but failed, to show—through specific and individualized facts—an “intimate and complete” control exercised by one entity over another, rendering the controlled entity its agent. *See, e.g., Roorda v. Volkswagenwerk, A.g.*, 481 F. Supp. 868, 870 (D.S.C. 1979) (finding jurisdiction merely because of “the intimate and complete control” exercised by one entity over another, rendering the controlled entity its agent, all as shown by **specific facts** (emphasis added)). More specifically, the Receiver was required, but failed, to satisfy the following four factors, with sufficient factual specificity, for jurisdiction to be properly conferred: (1) common ownership, (2) financial independence, (3) degree of selection of executive

²³ This is so even though the circuit court noted “this Court (and many others) recognize the alter ego test for personal jurisdiction is **less stringent** than the alter ego test for liability.” (Emphasis in original). For such limited proposition—which cannot be used to wholly abandon fundamental principles of personal jurisdiction and constitutional protections and disregard the actual facts in the record—the circuit court cited: an earlier order from the same circuit court in the asbestos docket, two federal district court cases of which one is unpublished, and the above-described improper legal opinion affidavits submitted by the Receiver in an effort to overcome the deficiencies in his pleading and the absence of facts supporting an exercise of jurisdiction over the Sparrows Appellants. Even if this proposition was reflective of settled and binding case law, which it is not, the result remains the same as to the Sparrows Appellants and the record below; under any standard—stringent or not, but meeting the constitutional minimum of comporting with due process requirements and not being offensive to traditional notions of fair play and substantial justice—personal jurisdiction cannot be found over them.

personnel and failure to observe corporate formalities, and (4) the degree of control over marketing and operational policies. *Builder Mart of Am., Inc., v. First Union Corp.*, 349 S.C. 500, 511, 563 S.E.2d 352, 358 (Ct. App. 2002), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003).

“It is **essential** that all four factors be present with sufficient factual specificity to confer jurisdiction on courts.” *J.R. v. Walgreens Boots All., Inc.*, 470 F. Supp. 3d 534, 546–49 (D.S.C. 2020), *aff’d*, No. 20-1767, 2021 WL 4859603 (4th Cir. Oct. 19, 2021) (emphasis added) (requiring these factors to show that the subsidiary “functions as the agent or mere department” of its parent entity (quotation omitted)); *Builder Mart*, 349 S.C. at 511, 563 S.E.2d at 358 (finding a failure of “proof of any of the factors beyond mere allegations, much less proof of all four to the requisite degree of specificity”; noting that the court is “not bound to accept as true a legal conclusion couched as a factual allegation”; and clarifying that “unified marketing and advertising and holding out to the public as a single entity, **without more**, [is] insufficient to confer jurisdiction” (emphasis in original)).

Here, the allegations in the Third-Party Complaint and the facts in the record fail to support a finding that the Sparrows Appellants were alter egos of Cape PLC. None of the four required factors have been satisfied. As to common ownership, the lone allegations—relevant to this factor and generically to the Sparrows Appellants—in the Receiver’s pleading are that in October 2017 AIA and Altrad UK acquired and have since controlled Cape; that, thereafter, an undefined “Altrad Group” of multinational entities controlled AIA and Altrad UK; and that in July 2022 each of the Sparrows Appellants were acquired by that “Altrad Group” such that each is now distantly related to Cape PLC and (CIHL) through multiple tiers of corporate parents. *Tibbs Third-Party Compl.* at 54–55. Put simply, this alleged distant and recent relationship, without more, is insufficient to

satisfy this first factor in the control analysis, and it was error for the circuit court to simply adopt these pled legal conclusions couched as factual allegations as part of its finding that the Sparrows Appellants were alter egos to Cape PLC.²⁴ Dec. 6 Order at 48. That is especially so where the Receiver’s pleading alleges that each of the 33 initially named Third-Party Defendants—incorporated at different times, many in different countries, belonging to three pled “groupings” of entities—control Cape PLC such that an alter-ego relationship may simultaneously exist among all of them. *Tibbs* Third-Party Compl. at 62. This is merely an invitation to make the very farfetched inferences that the law forbids.

Even if the allegations of an attenuated connection, via multi-tiers of separation, involving the Sparrows Appellants was sufficient to satisfy the first factor of this control analysis, which it is not, no specific facts are alleged tending to show a lack of financial independence between any of between the Sparrows Appellants and Cape PLC (or any other Cape entity). The conclusory and non-individualized allegation that “Cape” is financially dependent on an aggregated grouping of all Third-Party Defendants, inclusive of the Sparrows Appellants—if it were even true—is not enough to satisfy the second factor of the alter-ego test. *See id.* It was error for the circuit court to simply adopt these pled legal conclusions couched as factual allegations. Dec. 6 Order at 48.

For similar reasons, the conclusory allegations that an aggregated grouping of all Third-Party Defendants, inclusive of the Sparrows Appellants, dominated and controlled “Cape’s and NAAC’s executive personnel and boards of directors” and “fail[ed] to follow corporate formalities between [Cape PLC] and [them]” is likewise insufficient, especially where elsewhere in the

²⁴ *See generally Salley v. Heartland-Charleston of Hanahan, SC, LLC*, No. 2:10-CV-00791, 2010 WL 5136211, at *4–5 (D.S.C. Dec. 10, 2010) (refusing to draw “farfetched inferences” as to purported control by an entity over a “sixth-tier subsidiary”); *Harris v. Option One Mortg. Corp.*, 261 F.R.D. 98, 110–11 (D.S.C. 2009) (refusing to permit suit to allow plaintiffs to sue a fifth-tier parent company).

Receiver’s pleading those very allegations are belied by noting that each of the Sparrows Appellants only became distantly related to Cape PLC (and CIHL) in mid-2022 and none of the Sparrows Appellants were even formed until decades after NAAC was liquidated. *Tibbs* Third-Party Compl. at 54–55, 62. The third factor of the alter-ego test has not been satisfied, and the court below erred by finding otherwise.

As to the final, fourth factor, the conclusory allegation in the Receiver’s Third-Party Complaint that “Cape” depends on all Third-Party Defendants, including the Sparrows Appellants, with regard to marketing and operations is also insufficient. *See id.* at 62. Again, no specific facts are pled showing **any** relation, dependence, or influence by any of the Sparrows Appellants—during the brief and recent period in which an attenuated relationship has existed between them—on marketing or operational policies of Cape PLC or any other Cape entity. The fourth factor of the alter-ego test has not been satisfied, and, as above, the court erred in its findings to the contrary.

Based on a failure to satisfy each and every one of the four-factor alter-ego test, the circuit court should have found that a prima facie showing of “intimate and complete” control, by and between any of the Sparrows Appellants and Cape PLC, has not been made. More so, the court below should have found that even if made, the Sparrows Appellants successfully rebutted that showing through the specific averments in the affidavits submitted with their 12(b)(2) Motions to Dismiss, including that each: (1) has never had any direct or indirect ownership in—or exercised or maintained, or sought to exercise or maintain, any actual or indirect influence or control over—Cape PLC, CIHL, or any of their current or historical subsidiaries or predecessors, including NAAC; (2) has maintained a separate and adequately capitalized financial position and has not commingled assets or funds with any other entity; (3) has duly appointed and functioning corporate management and executive officers, has maintained separate corporate records, and has observed

separate corporate formalities; and (4) has maintained a separate corporate structure as to operations in a different and non-unified line of business from that historically or presently conducted by Cape PLC, CIHL, or any of their predecessor or subsidiary companies, including NAAC. *See* Exs. A to Sparrows Appellants’ 12(b)(2) Motions to Dismiss.

Instead of doing so, the circuit court wrote off the Receiver’s improper attempt to shift the focus from alleged control by the Sparrows Appellants directly over Cape PLC and its present or historical subsidiaries to an impermissible argument of indirect or imputed control via the unilateral actions and status of others. For example, in December 6 Order, the circuit court found:

First, since July 2022, Cape and the “Sparrows Group” have shared common ownership as part of the Altrad Group, which in turn is owned almost entirely by Mr. Altrad. *See* Third-Party Complaint ¶ 117. **Second**, both are allegedly controlled and financially dependent on AIA, under the direction of Mr. Altrad. *Id.* ¶ 116–18. **Third**, consistent with its alleged control of Cape (*id.* ¶ 116), AIA appears to control the selection of executive personnel over the Sparrows entities. *See id.* ¶ 118. . . . **Fourth**, and ultimately, AIA (as a corporate instrumentality of Mr. Altrad) is plausibly alleged to exercise control over both Cape and the Sparrows entities’ operations. *See* Third-Party Complaint ¶¶ 116–19.

Compounding these errors, the circuit court then improperly adopted the Receiver’s citations to (i) unilateral actions of unrelated entities (Sparrows Offshore Group Ltd. and The Sparrows Group, LLC) subsequent and purportedly in response to the filing of the Receiver’s pleading and (ii) inadmissible, non-competent foreign website articles as to leadership changes in Scotland (where the Sparrows Appellants do not reside or maintain its principal place of business) and a 2023 rebranding effort retaining the “Sparrows” name.²⁵ Dec. 6 Order at 48–49.

²⁵ These website articles further note that the entities involved would operate autonomously and do not mention, reference, or in any manner indicate a connection between these Sparrows Appellants and Cape PLC, CIHL, NAAC, or any other Cape entity or historical occurrence in any manner related to asbestos or asbestos-containing products.

In the face of the disjointed and scant allegations in the Receiver’s pleading and the references to irrelevant actions of others and hearsay in foreign website articles, the court below erred in giving credence to the Receiver’s argument that: an alter-ego relationship exists between AIA (or another member of an undefined “Altrad Group” of entities) and Cape PLC; a separate alter-ego relationship exists between AIA (or one or more other “Altrad Group” entities) and each of these Sparrows Appellants; and, *ipso facto*, an alter-ego relationship may be found between the Sparrows Appellants and Cape PLC, as well as all other entities within the undefined “Altrad Group” and “Sparrows Group” of entities. *Id.* at 38, 47–50. This farfetched leap is inconsistent with South Carolina jurisprudence and fundamental due process and constitutional protections and should have not been taken. On this record devoid of facts showing “intimate and complete” control or the functioning as a “mere department” or a “façade” of another, an alter-ego theory cannot be used to exercise personal jurisdiction over the Sparrows Appellants.

iii. Errors as to single business enterprise / amalgamation.

The circuit court’s summary finding that the Third-Party Complaint made the requisite showing as to personal jurisdiction pursuant to the single-business-enterprise or amalgamation theory is likewise error, even if such theory may properly be used as a basis to exercise personal jurisdiction (as opposed to liability) over the Sparrows Appellants in the first place.²⁶ For the same

²⁶ Whether such theory may be used for personal jurisdiction purposes is contested, including because of the contradiction of long-standing jurisprudence of the United States Supreme Court mandating that “[e]ach defendant’s contacts with the forum State must be assessed individually.” *Calder v. Jones*, 465 U.S. 783, 790 (1984). In this regard, although the Receiver cites to several alleged “enterprise” cases, **none** of those cases applied such a theory to establish personal jurisdiction, as opposed to a merits inquiry on liability, much less over numerous defendants. See Sparrows Objections to Receiver’s Proposed Order at 15. As to this legal question—which this Court must review *de novo*—the circuit court erred in finding single-business-enterprise could support an exercise of personal jurisdiction.

reasons discussed above, the Receiver’s pleading failed to make a prima facie showing that personal jurisdiction may be exercised over any of the Sparrows Appellants through such a theory.

At a minimum, it must be shown, through specific and individualized facts, a blurring of the legal distinction between the entities at issue and their activities and that bad faith, abuse, fraud, wrongdoing, or injustice has resulted from such blurred distinction. *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986). As described by the South Carolina Supreme Court in *Pertuis*:

[W]here multiple corporations have unified their business operations and resources to achieve a common business purpose and where adherence to the fiction of separate corporate identities would defeat justice, courts have refused to recognize the corporations’ separateness, instead regarding them as a single enterprise-in-fact, to the extent the specific facts of a particular situation warrant.

Pertuis v. Front Roe Rests., Inc., 423 S.C. 640, 652–53, 817 S.E.2d 273, 279 (2018). However, the South Carolina Supreme Court has also made clear that such doctrine “is not to be applied without substantial reflection” and that:

Creation of affiliated corporations to limit liability while pursuing common goals lies firmly within the law and is commonplace. We have never held corporations liable for each other’s obligations merely because of centralized control, mutual purposes, and shared finances. There must also be evidence of abuse, or . . . injustice and inequity. By “injustice” and “inequity” we do not mean a subjective perception of unfairness by an individual judge or juror; rather, these words are used . . . as shorthand references for the kinds of abuse, specifically identified, that the corporate structure should not shield—fraud, evasion of existing obligations, circumvention of statutes, monopolization, criminal conduct, and the like. Such abuse is necessary before disregarding the existence of a corporation as a separate entity. Any other rule would seriously compromise what we have called a “bedrock principle of corporate law”—that a legitimate purpose for forming a corporation is to limit individual liability for the corporation’s obligations.

Disregarding the corporate structure involves two considerations. One is the relationship between two entities The other consideration is whether the entities’ use of limited liability was illegitimate.

Id. at 654–55, 817 S.E.2d at 280 (quotations omitted).

While the foregoing principles are critical to a merits inquiry on this theory, for jurisdictional purposes (if such theory is even an appropriate basis on which a court may exercise personal jurisdiction in South Carolina), the underlying pleading must still contain specific and individualized facts as to a blurring of legal entities and resulting injustice. Those specific facts are missing as to each of the Sparrows Appellants. That is, there are no specific facts in the Third-Party Complaint or in the record tending to show that any of the Sparrows Appellants have unified their business operations, finances, or resources with Cape PLC, any other Cape entity, or any other entity in the undefined “Altrad Group,” nor are there any specifics alleged tending to show how any of the Sparrows Appellants have benefitted from acts of, or historical events surrounding, Cape PLC (or CIHL), when the Sparrows Appellants were acquired in mid-2022—not by Cape PLC or any other Cape entity—decades after such acts and events are alleged to have occurred. Even more so, there are no specific facts demonstrating that any of the Sparrows Appellants have taken any impermissible actions in an attempt to limit their liability for actions for which they could not possibly be liable. The fact that the Sparrows Appellants are alleged to be part of an organizational structure that has evolved through acquisition activity and flows up to an ultimate terminus, like all corporate organizations inclusive of multiple entities, is of no consequence on its own. As such, aside from conclusory allegations and an invitation to make unsupported inferences, no showing of the requisite injustice has been made as to the Sparrows Appellants. Contrary to the circuit court’s errant findings, a *prima facie* showing has not been made as to them.

But, even assuming such a *prima facie* showing had been made relative to this theory (if available for jurisdictional purposes), which it has not, the Sparrows Appellants rebutted that showing through the specific averments set forth in the affidavits submitted with their 12(b)(2)

Motions to Dismiss, including that each has maintained a separate corporate structure (including relative to their respective parent entities), has not commingled assets or funds, and has maintained a different and non-unified line of business separate from Cape PLC and its predecessor and subsidiary entities. *See* Exs. A to Sparrows Appellants’ 12(b)(2) Motions to Dismiss. Instead, of giving effect to the actual facts in the record before it, the circuit court repeated the Receiver’s conclusory and unsupported refrain:

[T]hese entities have been absorbed into and intertwined with AIA—the current owner, controller, and successor-in-interest to Cape—and the broader Altrad Group, which continues to benefit from Cape’s sale of asbestos and evasion of its associated liabilities to tort victims within the United States, including South Carolina.

Dec. 6 Order at 49.

As with the Receiver’s pleading itself, no specifics are included in the circuit court’s December 6 Order as to how any of the Sparrows Appellants have ever benefitted from third-party’s historical sales of asbestos or alleged evasion of liabilities, especially where, as here, the Sparrows Appellants were formed decades after NAAC liquidated and have only become distantly related to Cape PLC (and CIHL) as of July 2022 and are not, and have never been, in any business operation related to asbestos or asbestos-containing products. The circuit court ignored every single one of these undisputed facts in making its ruling, and instead of ending its inquiry there in favor of the Sparrows Appellants, the circuit court compounded its errors, as addressed above, by: (i) citing to the decision and act of a separate and unrelated legal entity (Sparrows Offshore Group Ltd.) to liquidate in the United Kingdom and (ii) finding that “certain affiliates of . . . Altrad Group members share a common registered address with Cape” in the United Kingdom, even though such detail clearly has no bearing on these separate Delaware, USA entities that do not share a common registered address with Cape. Finally, the circuit court reached its errant conclusions even though

there was no evidence that the Sparrows Appellants—each of which is an active, ongoing business—exist for the purpose of bad faith, abuse, fraud, wrongdoing, or injustice. *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 280–81.

The circuit court’s findings are the result of a tortured misapplication of law—under either single-business-enterprise or alter-ego theories—to the facts in the record. These facts establish there was no credible evidence to support either of the “other equitable grounds for exercising personal jurisdiction.” Where the circuit court should have been “hesitant to invade the corporate form,” it chose to make a leap to subject Sparrows Appellants to personal jurisdiction. *Walbeck v. I’on Co., LLC*, 439 S.C. 568, 593, 889 S.E.2d 537, 550 (2023). This was error.

CONCLUSION

For the reasons set forth above, the circuit court erred in continuing and modifying the Cape PLC receivership and, in these circumstances, creating a new receivership altogether, in the face of numerous procedural deficiencies as to service and notice and even though the circuit court had no authority to create a receivership in the first instance. Additionally, the circuit court erred by finding personal jurisdiction over the Sparrows Appellants—not based on “traditional” principles of general and specific jurisdiction, but on inapplicable “other equitable grounds”—given the uncontroverted facts and evidence properly in the record. This Court should reverse the circuit court’s December 6 Order and remand to the circuit court with instructions to dismiss the Sparrows Appellants.²⁷

²⁷ Per Rule 208(b)(6), SCACR, the Sparrows Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad, Altrad Investment Authority S.A.S., ESAB Corporation, Charter Consolidated Ltd., Central Mining & Investment Corporation Ltd., Anglo American PLC, De Beers, PLC, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Ltd., and De Beers UK Ltd.

Respectfully submitted,

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February 22, 2024

CERTIFICATE OF SERVICE

I, Ashwin R. Sanzgiri, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, do hereby certify that I have this date served the foregoing **INITIAL BRIEF OF APPELLANTS ARRANCO US, LLC; HAWK BIDCO (US) INC.; AND SPARROWS OFFSHORE, LLC**, dated February 22, 2024, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated May 6, 2022, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

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