THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case No. 2023-002008

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company;

Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority 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 the

Appellants.

REPLY IN SUPPORT OF MOTION TO DISMISS INTERLOCUTORY APPEALS (SPECIFICALLY, THE APPEAL FILED BY THE OPPENHEIMER APPELLANTS)

The Receiver[1] submits this brief reply in support of his Motion to Dismiss Interlocutory Appeals (the "Motion")—addressing particularly herein the December 2023 Notice of Appeal filed by Appellants/Third-Party Defendants Anglo American PLC, De Beers PLC, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., and De Beers Centenary AG ("the Oppenheimer Appellants"), which bears Appellate Case No. 2023-002008. This appeal, just as the numerous companion appeals filed by other Appellants/Third-Party Defendants, seeks premature, interlocutory review of the circuit court's December 6 Interlocutory Order rejecting their personal jurisdiction arguments for dismissal and requests to dissolve the Cape Receivership.[2] For three reasons, the Oppenheimer Appellants' arguments fail, and the Motion must be granted:

[1] The Receiver is Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd.

[2] All of the Appellants/Third-Party Defendants whose personal jurisdiction and dissolution arguments the circuit court rejected in the December 6 Interlocutory Order filed premature appeals thereof, making arguments substantially similar to those advanced by the Oppenheimer Appellants in this case. In response to the filing of those appeals, the Receiver filed a consolidated Motion to Dismiss Interlocutory Appeals seeking dismissal of them all; at this time, however, only the Oppenheimer Appellants have filed a return thereto. Accordingly, the Receiver files this Reply only in Appellate Case No. 2023-002008 and will address, in turn, any additional returns filed by the other Appellants/Third-Party Defendants in the companion appeals listed below:

- Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case No. 2023-002006);
- Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case No. 2023-002007);
- ESAB Corporation (Appellate Case No. 2023-002009);
- Charter Consolidated Ltd. (Appellate Case No. 2023-002010); and

1. **The Law Is Clear: The Circuit Court's Order Denying the Motions to Dissolve the Cape Receivership Cannot Be Immediately Appealed.**

The Motion attached dismissal orders entered by the Supreme Court and this Court in *Childers*, *Welch*, *Mitchell*, and *Link* that are identical to this appeal—not only with respect to the underlying motions filed in the circuit court and type of order on appeal (refusing to grant motions to dissolve a receivership) but also as to the statutory provision invoked by appellants to futilely cloak an interlocutory order with immediate-appealability urgency. (*See* Motion, Ex. A). The appellants in those four cases, just like all the Appellants/Third-Party Defendants in this and other companion appeals of the December 6 Interlocutory Order, invoke S.C. Code § 14-3-330 as authority for their premature appeals. This is an argument the Supreme Court and this Court have consistently and decisively rejected in this exact scenario. Dismissal is required.

Perhaps sensing the futility of their attempt to distinguish this premature receivership appeal from the string of others recently dismissed by our appellate courts, the Oppenheimer Appellants next argue, in so many words, "those orders don't apply to us because they are not published opinions." (*See* Return, at 3-4). Setting aside for a moment the surprising bravado that underlies the decision by an interlocutory appellant to intentionally ignore this Court's recent application of appealability rules *simply because this Court encapsulated those rules in an order but not a written opinion*, the Oppenheimer Appellants again miss the point. The vehicle chosen by the Supreme Court or this Court to announce its dismissal of a premature, interlocutory appeal does not change the law that required the dismissal in the first instance. Indeed, the Oppenheimer Appellants may choose (at their own peril) to ignore the particular orders entered in *Childers*, *Welch*, *Mitchell*, and *Link*, but they cannot ignore the foundational law underlying those orders.

- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2023-002011).

The law is—and has been for some time—that an order refusing to dissolve a receivership cannot be immediately appealed under the scope for interlocutory appeals defined by S.C. Code § 14-3-330 and extensive case law.[3]

2. The December 6 Interlocutory Order Refused To Dissolve The Cape Receivership Created In The *Parks* Case; It Did Not Grant Or Modify It.

The Oppenheimer Appellants also cannot avoid the defined and limited scope of immediately-appealable orders by pretending the December 6 Interlocutory Order is something that it is not. They claim the circuit court not only denied their motion to dissolve the Cape Receivership created in the *Parks* case but also created a new receivership or otherwise modified it in a way that allows them to immediately appeal that decision. These are the same semantic games played by the Oppenheimer Appellants (and others appealing the same order) in the circuit court—all of which the circuit court resoundingly rejected in the December 6 Interlocutory Order. This Court should also reject this "gotcha" game, which consists of the following strategy:

a) File a motion to dissolve the Cape Receivership created in *Parks* but inject some name confusion in that motion by introducing—for the first time this litigation—an entirely new entity that shares the "Cape PLC" name but did not sell asbestos (rather, this new "Cape PLC" entity is a "Singapore and Jersey tax resident" created in the Bailiwick of Jersey in April 2011 to act as a "holding company of the Cape Group" for tax purposes);

b) Accuse the circuit court of creating, in the *Parks* case, a receivership over this entirely new Balliwick of Jersey entity rather than a receivership over the original Cape PLC, which has existed for approximately 130 years in the United Kingdom in various iterations and is alleged to have sold most of the blue (crocidolite) and brown (amosite) asbestos in the United States and in South Carolina, including asbestos that injured the plaintiffs in the *Parks* case; and

c) When the circuit court denies the motion to dissolve and addresses this straw man Balliwick of Jersey entity, immediately appeal that order and accuse the circuit

[3] And, in any event, no extensive discussion of the law, facts, and underlying procedural history is required for the Supreme Court or this Court to dismiss any appeal as improvidently filed; the Supreme Court and this Court did in *Childers*, *Welch*, *Mitchell*, and *Link* what they have done for decades—expediently dismiss improper appeals without further ado so our appellate courts can focus on the appeals that are properly before them.

> court of "modifying" the real Cape Receivership or granting an entirely new receivership over the Balliwick of Jersey entity.

The Oppenheimer Appellants and their cohorts have already lost this game. The December 6 Interlocutory Order sets forth an extensive analysis of what occurred in the *Park* case when the Cape Receivership was created, and it does so *only* in the context of the circuit court's rejection of the requests to dissolve that receivership before it:

> Other than the common name, there is no evidence the *Park* Plaintiffs meant to sue the new Bailiwick of Jersey entity as a defendant in their asbestos exposure lawsuit. The new entity was not organized in the United Kingdom; the new entity has existed for less than 20 years; and there is no indication in the record the new entity was the same entity that historically sold asbestos in the United States (nor could there be given its relative infancy).
> …
>
> [And although service was apparently accomplished with] a copy of the complaint and summons addressed to Cape PLC and Cape Intermediate Holdings Ltd. . . . "Cape PLC" was the name of the company between August 1, 1989 and June 27, 2011, while "Cape Intermediate Holdings Ltd." was the company's current name at the time of service . . . . This evidence reveals the *Park* Plaintiffs intended to serve the older Cape PLC entity using (perhaps out of an abundance of caution) both formerly known-as and currently-known-as nomenclature. . . . To the extent it was error for the service paperwork to include the "formerly known as" name of the entity, the Court finds that misnomer does not render service of process ineffective.

(12/6/23 Order, at 17-19). It was clear all along that the Cape Receivership at issue was related to Cape PLC, n/k/a Cape Intermediate Holdings Ltd., not the other Balliwick of Jersey Cape PLC injected by the Oppenheimer Appellants and other Appellants/Third-Party Defendants that had no connection to the sale of the asbestos that led to the *Parks* case.

The circuit court's clarification in the December 6 Interlocutory Order of what transpired when the Cape Receivership was necessitated only by the feigned ignorance of Appellants/Third-Party Defendants about the involved entity—which they alone injected into this case—not by any

substantive change to the Cape Receivership itself. There simply is no immediately appealable issue in the order they challenge.

3. The Oppenheimer Appellants Admit That The Personal Jurisdiction Holdings Included In The December 6 Interlocutory Order Are Not Alone Immediately Appealable.

As explained above, there is no immediately-appealable issue in the December 6 Interlocutory Order and there is no order in this case at all that created, granted, or modified a receivership. Beyond that, the Oppenheimer Appellants essentially concede the personal jurisdiction holdings included within that same order are not immediately appealable alone; appellate courts only consider those issues in an interlocutory appeal when there is a separate appealable order before the court. There is no separate appealable order here,[4] and this Court should reject this as *yet another attempt* to manufacture phantom, interlocutory appealability.

Conclusion

This premature, interlocutory appeal must be dismissed. Both the South Carolina Supreme Court and this Court have recently and decisively dismissed as premature similarly-situated, interlocutory appeals which too sought immediate review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. The outcome should be no different in this case.

(Signature page follows)

[4] To the extent footnote 3 of the Oppenheimer Appellants' return attempts to use a discovery response to create finality and immediately appealability that does not otherwise exist (Return, at 8), there is simply no legal or factual support for their interpretation. A discovery response cannot transform personal jurisdiction into an immediately appealable issue, nor does *that particular discovery response* even concede jurisdiction is final and can never be challenged again.

Respectfully Submitted,

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May 3, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit

The Honorable Jean H. Toal,
Acting Circuit Court Judge

Case No. 2023-CP-40-01759

Appellate Case No. 2023-002008

John A. Tibbs v. Asbestos Corporation Limited, et al

PROOF OF SERVICE

I, Lindsay A. Joyner., of Gallivan White and Boyd, PA, *Attorney for Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,* hereby certify that the **REPLY IN SUPPORT OF MOTION TO DISMISS INTERLOCUTORY APPEALS** was served on all other parties to this appeal on May 3, 2024, via email to their following counsel of record:

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May 3, 2024

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Attachments: Th Receiver's Reply in Support of Motion to Dismiss Interlocutory Appeals.pdf; 5.03.24 POS for Reply in Support of MTD.pdf

All,

Please find served upon you, in compliance with the Supreme Court's Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), Respondent's Reply in Support of Motion to Dismiss Interlocutory Appeals (Specifically, The Appeal Filed By The Oppenheimer Appellants) in the above-referenced appellate cases, which we will be filing with the Court of Appeals of South Carolina momentarily, which will include a copy of this email with the POS attached here as well.

Please let me know if you have any questions.

Thanks,
Lindsay

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1948 - 2023

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