THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2023-002006 and 2024-000524
Circuit Court Case No. 2023-CP-40-01759

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

v.

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

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

of which

Asbestos Corporation Limited is the..... Appellant,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,..... Third-Party Plaintiff/ Respondent,

v.

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

of which

Mohed Altrad and Altrad Investment Authority SAS are the..... Appellants.

ALTRAD DEFENDANTS' OPPOSITION TO MOTION TO DISMISS APPEAL OF ORDER GRANTING NEW RECEIVERSHIP AND MODIFYING PRIOR RECEIVERSHIP

INTRODUCTION

In a two-page filing with no substantive discussion whatsoever, the Receiver has requested this Court dismiss six separate appeals, all of which stem from a December 6 Order entered by the circuit court in the underlying action. Instead of any legal analysis, the Receiver attached a "Packet of Orders" and provided no explanation of why or how those orders apply here. The reason is obvious: they don't. This case has nothing to do with any issue presented in that "packet." This case is not one where a receiver is chasing insurance policies; this case involves unlawful third-party claims by a receiver against myriad companies located elsewhere in the United States, myriad companies located in foreign countries, and even an individual foreign citizen. The appellate courts must enforce the law as it is written, beginning with the appealability statute. Otherwise, it is unclear when or if the order unlawfully granting this receivership will ever be subject to appellate scrutiny.

As this Court has stated many times before, appealability of a lower court order is a case-by-case determination. Setting aside the conclusory nature of the Motion to Dismiss, the appellate court orders cited therein bear no similarity to this appeal beyond also involving a receivership. The actual issues involved in this appeal are fundamentally different from each of those cases in a way that renders the matters addressed in the circuit court's December 6 Order immediately appealable for *one* simple, primary reason—**the December 6 Order *granted* a brand new receivership out of thin air and without notice to the company now supposedly in receivership.**

This is indisputable, and it brings this appeal directly within the scope of South Carolina Code § 14-3-330(4)'s plain language that any order—interlocutory or final—"granting, continuing, modifying, or refusing the appointment of a receiver" is immediately appealable. The Receiver's motion to dismiss should be summarily denied, and the Receiver should be required to file a brief on the merits of this appeal.

PROCEDURAL BACKGROUND

The procedural background as to the Receiver's appointment is key to understanding why the December 6 Order is immediately appealable. "The determination of whether a trial court's order is immediately appealable is governed by statute." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015). The relevant statute gives parties a right to immediately appeal "[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver." S.C. Code Ann. § 14-3-330(4). As discussed below, the December 6 Order grants the appointment of a receiver and, in so doing, modifies and continues an existing receivership appointment.

***Park* Case.** This case arises out of a Third-Party Complaint filed in the court below by Receiver, who was appointed over an entity named Cape PLC. To be clear, the Receiver was not appointed in this case, but rather was appointed in a separate asbestos lawsuit entitled *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. In *Park*, the Plaintiffs sued many entities and specifically named both Cape PLC and Cape Intermediate Holdings Limited ("CIHL")

among the defendants, correctly recognizing they are different entities. (App. 18, 88, *Park* First & Second Am. Compls. ¶¶ 26–27 (filed Nov. 17, 2021 and Dec. 23, 2021, respectively).)[1]

Upon full conclusion of the *Park* case—after Plaintiffs' counsel emailed 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. (App. 215, Email from *Park* Counsel Confirming Case's Conclusion (June 3, 2022).) Nothing in the record even suggests that Cape PLC or CIHL were served with the Second Amended Complaint in *Park* prior to the full resolution of that case.[2]

Receiver Appointed Over Cape PLC in *Park*. Mr. Park never got a judgment against either entity. Yet, nine months after his case was "fully resolved" according to his own counsel's representations to the circuit court, Mr. Park inexplicably requested that the circuit court place Cape PLC—and only Cape PLC—into a receivership. (App. 142, *Park* Motion to Appoint Receiver.) Even though it was identified as a defendant in the *Park* case, the Park plaintiffs never sought a receivership over CIHL, nor did they even mention CIHL in their motion to appoint a receiver.

The Motion to Appoint the Receiver was never—and thus far has never been, according to the record—served on Cape PLC (and no proof of service has been provided as to CIHL, either).[3]

---

[1] 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 currently, nor has it ever been, dissolved. 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. (*E.g.*, App. 88, *Park* First Am. Compl. ¶ 27.) That is incorrect, as Cape PLC is a Jersey company, created in 2011.

[2] 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* Park.**

[3] 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 without any evidentiary support:

Nevertheless, less than two weeks after the motion was filed, without a hearing, and at the request of a non-creditor, the circuit court granted the motion and appointed a Receiver over Cape PLC pursuant to South Carolina Code §§ 15-65-10(4) and (5). The circuit court held that a receivership was proper because Cape PLC has "dissolved" and had "forfeited its charter," ***both of which are untrue***. (App. 418, *Park* Order Appointing Receiver.) And just like the *Park* plaintiffs, the circuit court never mentioned CIHL in its appointment order.[4]

Cape PLC Receiver Brings Third-Party Action in *Tibbs*. Cape PLC was identified as a defendant in another asbestos case, *Tibbs v. 3M Company*, Case No. 2023-CP-40-01759. On June 30, 2023, the Receiver filed a third-party complaint in *Tibbs* against over thirty companies and individual foreign citizen. ***None are insurance carriers, and none are South Carolinians.***

Appointment Modified to Create a New Receivership Over CIHL. Several third-party defendants, including the Altrad Defendants—which includes the French company Altrad Investment Authority SAS, and an individual foreign defendant, Mohed Altrad—challenged the lawfulness of the Receiver's appointment, among other arguments in support of dismissal of the third-party complaint. In ruling on Motions to Dissolve the Receivership filed by the Altrad Defendants and other third-

"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 Altrad Defendants, along with other third-party defendants, have opposed that finding as not being supported by any affidavit or DHL delivery confirmation receipt and by noting the fact that the referenced "same address" in the U.K. was incorrect for Cape PLC, a Jersey entity. The Receiver has never challenged this assertion.

[4] 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. It is uncontroverted that they are two separate and distinct, active corporate entities—only one of which was even mentioned in the initial appointment motion and order.

party defendants, the circuit court acknowledged that Cape PLC isn't "dissolved," but it ignored the long list of procedural errors that plagued the appointment of the receiver and then, critically, ***modified the receivership into a brand new appointment over CIHL***, a separate and wholly distinct legal entity from Cape PLC. (App. 358–368, Order on Appeal at 15–25 (Dec. 6, 2023).)

This newest appointment is especially jarring and requires immediate appellate scrutiny. CIHL is not even a defendant in the *Tibbs* case. It had no notice of anything in the *Tibbs* case and has no connection at all to South Carolina, much less any property here. Yet the circuit court proceeded to appoint a Receiver over CIHL citing the doctrine of "misnomer," an argument that no one but the Receiver himself put forward. Certainly, if the *Park* plaintiffs had really meant for their motion to apply to CIHL instead of Cape PLC, they would have said so—after all, their counsel attended and participated in the hearing in which the receivership appointment was modified to include CIHL, and they even offered a "court exhibit" regarding their failed attempts to serve the First Amended Summons from *Park* on Cape PLC. But they did not, and for good reason: South Carolina law prohibits the invocation of "misnomer" in the context of a receivership appointment, as discussed below.

ARGUMENT

I. The December 6 Order granted a new receivership and modified and continued an existing one.

Appellate jurisdiction is established by statute. South Carolina Code § 14-3-330(4) gives litigants a right to immediately appeal "[a]n interlocutory order or decree in a court of common pleas . . . granting, continuing, modifying, or refusing the appointment of a receiver." There cannot be any legitimate dispute that the circuit court's December 6 Order did at least three of these.

At an elementary, yet fundamental level, the December 6 Order created and granted a receivership—for the first time—over CIHL and, necessarily, modified and continued the initial

appointment order, which made no mention of CIHL whatsoever. While the Receiver contended otherwise below, determination of that answer is a core question on the merits at the appeal and must be resolved by this Court on full briefing and argument, not on a motion to dismiss.

The circuit court's December 6 Order contains numerous errors of law, as set forth in the Altrad Defendants' Initial Brief, and resulted in the *granting* of a receivership over CIHL, an active and solvent entity, and the simultaneous *continuation and modification* of the receivership over Cape PLC. Stated differently, the Receivership was sought and granted in *Park* over Cape PLC. Realizing Cape PLC was the wrong entity, the Receiver now seeks to have the *Park* appointment apply to CIHL in *Tibbs*. Obviously, that is not legally possible, but the December 6 Order ignored the long list of procedural errors and made it so through the improper misuse of "misnomer" to conflate two wholly different entities and treat them as if they are one. *See Porter v. Brown*, 149 S.C. 151, 146 S.E. 810, 811 (1929) (allowing immediate appeal of denial of dispositive motion in similar case wherein receivership was created over wrong entity and was challenged in action separate from action in which receivership was erroneously created).

Moreover, the *Park* plaintiffs knew Cape PLC and CIHL were two distinct entities—and named them as such in their complaint. There was no basis for the circuit court to rule in this manner, and the ruling is incorrect as evidenced both in the factual record and as a matter of law given binding South Carolina precedent "on all fours" with the circumstances here. Dismissive characterization of this legitimate appeal as some "strategy," rather than the Altrad Defendants seeking recognition of their appellate rights, misses the point. Simple review of the history of each entity named in *Park* and the one for which the Receiver was actually appointed makes the issues put before this Court clear. And the Receiver's circular reliance on the very errors in the December 6 Order that are the basis for this appeal to argue the December 6 Order cannot be appealed

completely misses the fact that those findings are demonstrably wrong—which is why the appellate process exists, and why the Legislature has vested parties like the Altrad Defendants with a right to immediately appeal orders granting receiverships in Section 14-3-330(4).

In *Porter*, the South Carolina Supreme Court assessed the legality of a receiver appointed over "New York Civic Opera Company," which in the underlying complaint was referenced, in error, as a corporation organized under New York law when, in fact, the entity was a Florida corporation. 149 S.C. at 152, 146 S.E. at 810–11. Unlike the uncontroverted history of the instant case, the actual entity was served through an officer in New York as well as through a designated agent in Florida. *Id.* at 153, 146 S.E. at 811. In finding that the receiver had been unlawfully appointed and as further noting that all proceedings connected therewith were *coram non judice* and void, the Supreme Court explained:

> It is clear that a *fatal mistake* was made when the following words were added: "A corporation organized under the laws of the state of New York." This was vital in this case; there is no such corporation, *and all proceedings based on this error must fall*. A receiver was appointed for something that did not exist, because plaintiff bases his power and authority on an alleged act and creation of a corporation by the state of New York, and, when it appeared that the state of New York had created no such corporation, then there is an end to the matter. The existence of a person, corporation, or partnership for which an appointment of a receiver is sought is *fundamental*; and if there be no such person, corporation, or partnership, then it follows that there *can be no legally appointed receiver*. The existence of the New York corporation is the foundation of the alleged receivership proceedings, and, when it appears that there is no such New York corporation, then it follows that there can be no receiver who can bring any suit, and it also follows that, when [the receiver] attempts to bring any action against the defendant as such receiver, the defendants, who are the appellants in this case, have the right to object that the said [receiver] is not the legally appointed receiver in this case. It is therefore plain that the order appealed from must be reversed.

Id. at 157, 146 S.E. at 812–13 (emphasis added); *see also id.* at 161 & n.1, 146 S.E. at 813–14 & n.1 (Cothran, J., concurring) (collecting authorities for the propositions that: (1) "[i]t is well settled

as a general rule that the appointment of a receiver is an ancillary remedy in aid of the primary objection of the litigation between the parties"; and (2) "[i]f the Court is without jurisdiction to appoint a receiver[,] the order is void and may be attacked or disregarded whenever it comes collaterally in question" and "may be assailed collaterally and with impunity by anybody" (quotations omitted)).

Porter is controlling authority and conclusively establishes that the circuit court's reliance on the "misnomer" doctrine to transform Cape PLC (a Jersey entity) into CIHL (a separate UK entity) is impermissible because the initial creation of a receivership over Cape PLC was a "fatal mistake." The receivership over Cape PLC was void and uncorrectable under *Porter*, and the subsequent creation of a receivership over CIHL by definition "granted" a new receivership over CIHL, which is immediately appealable under *Porter* and South Carolina Code § 14-3-330(4). Critically, CIHL was not named in the original appointment order, Cape PLC and CIHL were separately named defendants in the *Tibbs* action in which the original receivership over Cape PLC was created (meaning the misnomer doctrine cannot apply because the *Tibbs* plaintiffs ***intentionally*** sued them as two separate entities), and Cape PLC and CIHL were incorporated in different foreign jurisdictions over one-hundred years apart. At a bare minimum, this Court must adjudicate this hotly contested jurisdictional dispute after full merits briefing—an outcome that the Receiver clearly wants to avoid as reflected in the bare-bones two page motion to dismiss that addresses none of the factual or legal issues necessary to resolve the jurisdictional point.

The import and validation of the errors in the case at hand and as fully detailed in the Altrad Defendants' Initial Brief—and further given the binding precedent of the Supreme Court in *Porter*—in conjunction with the actual effect of the circuit court's finding that a receivership requested in *Park* over Cape PLC could somehow be converted into a new, never-requested

receivership in *Tibbs* over both Cape PLC and now CIHL (two active, distinct, foreign entities with no connection to South Carolina or judgment against either) renders the circuit court's December 6 Order immediately appealable under South Carolina Code § 14-3-330(4).

II. Only the facts of this case can be relied upon to determine appealability.

The Motion to Dismiss improperly relies on procedural orders filed in other matters to ask this Court to summarily rule that this appeal is without merit and the December 6 Order is not immediately appealable. South Carolina law is clear that issues of appealability are determined "case-by-case." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) ("By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.").

Accordingly, the facts set forth in the Procedural Background section this opposition memorandum determine why the December 6 Order is appealable. Yet, the Receiver posits orders in other appellate cases are determinative here due to the fact they are "identical to this appeal." As set forth above, such a claim is wrong on its face; this appeal bears no resemblance to any other matter pending before a court in South Carolina or anywhere else.

And, to state the obvious, an error in the December 6 Order cannot be the basis to find that this case is similar to the others. At the most basic level, even if those orders are relevant here (which they are not), ***none*** of those appeals dealt with an order in which the circuit court ***granted a new receivership***. Similarly, ***none*** of those appeals were as to circuit court orders that included inextricably linked issues as to personal jurisdiction over alleged affiliates targeted by the entity in receivership under non-traditional bases for exercising specific jurisdiction over entities with no connection with, or contacts to, South Carolina. These jurisdictional issues are foundational, touch

nearly everything currently before this Court, and further distinguish the circumstances relevant to the requisite "case-by-case" appealability inquiry to be conducted here.

A. The Supreme Court's March 2024 *Payne & Keller* order is inapplicable.

On January 2, 2024, in *Childers v. Davis Mechanical Contractors, Inc., et al.* (hereinafter "*Payne & Keller*"), a number of third-party-defendant insurers filed a motion for certification of their appeal to the South Carolina Supreme Court. *See* C-Track entry dated January 3, 2024 in Appellate Case No. 2023-000727. That motion sought to certify an issue as to whether a receivership over Payne & Keller (a long-dissolved Texas company) was valid in light of the circuit court's order denying a motion to dissolve that receivership. By signed order, the Supreme Court decided the issue, stating nothing more than:

> Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.
>
> We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

Payne & Keller, S.C. Sup. Ct. Order, dated March 27, 2024 (Appellate Case No. 2024-000005).

The Supreme Court's *Payne & Keller* order has ***no*** bearing on the appealability of the order in this case because of the stark factual distinctions between the receivership at issue there and the receivership in this matter. Review of the motion to certify filed in that case reveals issues of: (1) a receivership over a dissolved corporation resurrected by the circuit court in a foreign jurisdiction; and (2) issues relating to insurance coverage of an entity placed into a receivership. As evident from the factual recitation above—and as set forth more fully in the Altrad Defendants' Initial Brief—there is ***zero*** congruency between the facts in *Payne & Keller* and the facts in this case.

Since appealability is determined case-by-case, blind reliance on a Supreme Court order containing no analytical discussion from a case as factually distinct as this one would be wholly inappropriate.

More specifically, in *Payne & Keller*, the insurer third-party defendants sought appellate review of the circuit court's ruling denying the receivership dissolution relief sought. In response to this Court's inquiry into appealability, a number of the insurers explained how the circuit court order fit within S.C. Code Ann. § 14-3-330(4), under the specific facts and procedural posture in that case, by arguing: (1) a denial of a motion to dissolve in effect and as a direct consequence thereof necessarily *continues* a receivership and (2) by permitting the Receiver to act outside of his appointment mandate—to "take any and all steps necessary to protect the interests of Payne & Keller whatever they may be"—through pursuit of a revocation of Payne & Keller's Texas termination, this Court in effect and as a direct consequence thereof necessarily *modified* the receivership. *See* Response to Court's Appealability Inquiry of AIG et al., dated May 15, 2023, at 9–10 (Appellate Case No. 2023-000727); Travelers' Response Regarding Appealability, dated May 15, 2023, at 5–7 (Appellate Case No. 2023-000727). ***And this Court agreed, finding that the insurers had "properly appealed" the circuit court's order.*** Order (Nov. 21, 2023) (Appellate Case No. 2023-000727). Beyond stating an outcome, the Supreme Court has not given the Bench or the Bar any indication why this Court's November 21, 2023 ruling in that case was incorrect.

Here, the appealability inquiry as to this Court's December 6 Order denying the Altrad Defendants' Motion to Dissolve is fundamentally and factually different, as this appeal concerns the circuit court's *grant* of an entirely new receivership (in *Tibbs*) over a legal entity (CIHL) separate and distinct from Cape PLC named in the court's underlying Order of Appointment (in *Park*). By *granting* an entirely new receivership, misconstruing the inapplicable doctrine of "misnomer," and ignoring South Carolina binding precedent, including as stated in *Porter*

(discussed above), the Court in fact also *modified* and *continued* a receivership. This is especially clear given that the circuit court's December 6 Order was issued following briefing by the Receiver expressly requesting amendment and modification to the underlying Order of Appointment. (App. 445, Third-Party Plaintiff's Omnibus Opposition to Motions to Dissolve at 17 n.13 (Oct. 18, 2023) ("The Court can simply amend the Appointment Order to clarify . . . if the Court finds that appropriate."); App. 448, *id.* at 20, n.15 ("The Receiver would have no objection to the Court's amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd., if the Court finds that appropriate. *See, e.g.*, *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 ('If it later appears that the true name of the corporation is different . . ., the misnomer is properly a subject of amendment.'); S.C. Code § 33-14-320(c) (permitting amendment of appointment order)." (ellipsis supplied by the Receiver)).)

With the facts of an entirely different receivership, parties, circumstances, circuit court order, appellate procedure, briefing, and other significant substantive differences, a three-sentence Order—containing no explanation or citation—cannot have bearing on the issues in this case. Respectfully, the December 6 Order is appealable pursuant to South Carolina Code § 14-3-330(4), and the non-precedential order dismissing the obviously-distinguishable *Payne & Keller* appeal is simply irrelevant.

B. Orders in *Welch*, *Mitchell*, and *Link* are likewise inapplicable to the appealability determination here.

On April 12, 2024, this Court issued three Orders denying appeals brought pursuant to Section 14-3-330(4), finding each not immediately appealable. *See Mitchell*, Appellate Case No. 2024-000341; *Link & Donaghy*, Appellate Case No. 2024-000342; and *Welch*, Appellate Case No. 2024-000337. Like *Payne &* Keller, two of those appeals (*Welch* and *Mitchell*) were brought by *insurers* under the similar *Payne & Keller* argument that by denying a motion to dissolve a

receivership, the circuit court in effect and as a direct consequence thereof necessarily *continued* the receivership. *See* Travelers' Response Regarding Appealability in both *Mitchell* and *Welch*, each dated March 25, 2024, at 6–9 (Appellate Case Nos. 2024-000341 & 2024-000341). *Mitchell* and *Welch* are as irrelevant here as *Payne & Keller*, as the issues presented in this appeal—including the granting of a new receivership—are fundamentally different from those cases.

The *Link & Donaghy* appealability argument is likewise irrelevant. Those appellants argued that a circuit court order in effect removed the chosen counsel of ACL and Atlas Turner and, accordingly, impaired a "substantial right" under South Carolina Code § 14-3-330(2). Appellants' Memorandum on Appealability in *Link & Donaghy* at 6 (Mar. 25, 2024) (Appellate Case No. 2024-000342). In turn, the Receiver acknowledged that orders granting receiverships over ACL and Atlas Turner were properly before the Court of Appeals—Receiver's Memorandum on Appealability in *Link & Donaghy* at 1 n.1 (Apr. 3, 2024) (Appellate Case No. 2024-000342)—but argued that a later order that instructed counsel for ACL and Atlas Turner to "cooperate" with the Receiver did not actually displace them as counsel. That obviously has nothing to do with the order on appeal in this case, which grants a new receivership over a different entity that is not even a party to the case from which the new appointment arises. This Court's ruling in *Link & Donaghy*, therefore, does not inform the controlling analysis here.

III. The findings on personal jurisdiction in the December 6 Order are properly before this Court.

To the extent the Receiver's motion is intended to only exclude the issue of personal jurisdiction from this appeal while leaving the remainder of the appeal intact, the Court should reject such posturing. As explained in the Altrad Defendants' Initial Brief, personal jurisdiction is inextricably intertwined with the propriety of the receivership appointment. Attempting to enforce a South Carolina receivership statute against an active, solvent foreign entities 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). "Although a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court." *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004). Stated differently, "an order that is not directly appealable will be considered if there is an appealable issue before the court*." Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001). This has long been a part of South Carolina law, and these are clearly established tenets of the appealability of orders in South Carolina law.

Accordingly, the key inquiry is that the personal jurisdiction issues be presented with another issue that is immediately appealable under South Carolina law. Here, as set forth above, the December 6 Order's granting, continuation, and modification of the "Cape PLC" Receivership is immediately appealable pursuant to the facts of this case, the nature of the underlying order on appeal, and Section 14-3-330(4)'s plain language. As detailed in the Altrad Defendants' Initial Brief, the appointment of a receiver over an active, foreign company in order to leverage assets out of other foreign entities (with regard to the Altrad Defendants, a French company and an individual French citizen) inextricably intertwines personal jurisdiction with the issues that are immediately appealable under Section 14-3-330(4). And even if these issues weren't inextricably intertwined, the circuit court's rulings on personal jurisdiction are so clearly erroneous that judicial economy warrants resolution of all of these issues at once, as fully and extensively discussed in the Altrad Defendants' Initial Brief. The Court should therefore reject the Receiver's request to peel issues out of this appeal that are rightly before the Court.

CONCLUSION

With only two pages of superficial statements and citation to zero published opinions, the Receiver has moved to dismiss this appeal, which was brought as a matter of right under South Carolina Code § 14-3-330(4), rather than address the Altrad Defendants' valid merits-based arguments as to the multiple errors in the circuit court's December 6 Order and the constitutional violations intertwined therewith. As set forth herein, the issues as to the "Cape PLC" Receivership are immediately appealable under Section 14-3-330(4), and procedural orders from other cases that have nothing to do with the issues in this appeal are irrelevant to the appealability of the circuit court's order here. Accordingly, the Altrad Defendants respectfully request this Court deny the Receiver's motion to dismiss this appeal.[5]

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

Attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS

May 6, 2024

[5] Per Rule 208(b)(6), SCACR, the Altrad Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated co-appellants in the related appeals, including the Sparrows Defendants, the Charter Defendants, and the DeBeers Defendants. For the sake of judicial economy, all citations to the Appendix herein are to the Appendix that accompanied the Sparrows Defendants' return in opposition to dismissal in Appellate Case No. 2023-002007 (filed May 6, 2024).

PROOF OF SERVICE

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

Pleading(s): Altrad Defendants' Opposition to Motion to Dismiss Appeal of Order Granting New Receivership and Modifying Prior Receivership

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)
Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)
Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)
Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)
Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr. (vrawl@grsm.com)
Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)
Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

May 6, 2024