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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case 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.; Flowserve 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' PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

Respectfully submitted,

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INTRODUCTION

This appeal challenges an order appointing a receiver over Cape Intermediate Holdings Limited, an active UK-based company that is not a party to this case, that has no connection whatsoever to South Carolina, and that had no notice it was even the subject of any proceedings, much less proceedings to have a South Carolina circuit court appoint a South Carolina attorney as a receiver over its property. The order below defies every norm of due process, jurisdictional boundaries, fair notice, and a host of obvious legal fatalities and errors of law. It is an incredible order that has no analog in South Carolina or any other known Western jurisprudence.

And it is immediately appealable as a matter of right. Respectfully, the order dismissing this appeal overlooked the controlling statute:

> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (4) ***An 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) (emphasis added).

The order dismissing this appeal also overlooked the controlling standard: the effect of an order, rather than its label, determines the order's appealability. *See, e.g.*, *Spalt v. S.C. DMV*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) ("The label given to the order is not determinative of its immediate appealability."); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015) (holding that appellate courts must "evaluate the trial court's order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable"); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of "substance rather than nomenclature").

It has never been the policy of the South Carolina Judiciary not to enforce a statute exactly as it is written; in fact, basic separation-of-powers doctrine requires the opposite. *See, e.g.*, *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013) (holding that when the words in a statute are "clear and definite," the Judiciary "has no right to impose another meaning" (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))); *see Hamilton v. Fulgham (In re Nov. 4, 2008 Bluffton Town Council Election)*, 385 S.C. 632, 639, 686 S.E.2d 683, 687 (2009) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning."); *A.O. Smith Corp. v. S.C. DHEC*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) ("An appellate court cannot construe a statute without regard to its plain meaning and many not resort to a forced interpretation in an attempt to expand or limit the scope of a statute." (quoting *Brown v. S.C. DHEC*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002))).

* * * * *

The appealability statute is clear, and these legal principles are black-letter law. Yet, the Altrad Defendants—as well as all other third-party defendants to this case, along with the Bench and Bar—are left to wonder why this Court has dismissed an appeal of an order that not only continues an unlawful receivership in the face of myriad reasons why it must be dissolved at once, but that also modifies the initial receivership appointment to actually grant a brand new receivership appointment out of whole cloth.

This case is ***exactly*** what Section 14-3-330(4) is designed to channel into the appellate system without delay so that an unlawful receivership can be immediately vacated and private parties—here, foreign companies and foreign citizens—relieved of the burdens of having their property interfered with or seized by a purported receiver that has no legitimate authority to act.

And there is no doubt that this receivership—whether over Cape PLC (an active Jersey company that has no property in, connection to, claim pending against it in, or judgment against it in South Carolina) or over Cape Intermediate Holdings Limited (an active UK company that has no property in, connection to, claim pending against it in, or judgment against it in South Carolina)—is unlawful. The Altrad Defendants have already fully briefed this appeal, the Receiver has never responded, and his arguments below (and the circuit court's order adopting them) are flatly contrary to settled South Carolina law and the jurisdictional boundaries and due process requirements established by the United States Constitution. It's not a close call.

And there is also no doubt that the order below is immediately appealable. This Court never made an "appealability inquiry." Nor did the Receiver file a motion to dismiss this appeal until after the Supreme Court issued its inapplicable and nonprecedential order dismissing an appeal in *Childers v. Davis Mechanical Contractors* without explanation or citation to any authority at all. But that order has nothing to do with this case, or any other. It contains no analysis or discussion, Appellate Court Rule 268(d)(2) specifically prohibits any reliance on it, and this appeal is plainly different in every material respect from that case—the Receiver has never rebutted any of these points.

But one thing is obvious: the Court should not indulge the Receiver's procedural gamesmanship and strip the Altrad Defendants and other third-party defendants of their appellate rights. The Receiver was appointed over a never-served-with-process active foreign company in *Park*, which--by that plaintiffs' own admission—was already "fully resolved," meaning that no one was even left in that long-resolved case to be aware of, much less appeal, the appointment.

Now, the Receiver treats that unlawful appointment as a roving license to bring claims in cases other than *Park*, including asking the circuit court to appoint him as receiver over a different

un-served active foreign company that is not even a party to this case, while also continuing the earlier unlawful receivership—requests to "grant" a new receivership and to "modify" and "continue" a prior appointment, all of which the trial court approved in the order on appeal.

The Court should not endorse the compounding errors of state statutory and federal constitutional law that have poisoned this receivership appointment from its outset, and South Carolina Code § 14-3-330(4) unquestionably authorizes this appeal so that the Court can correct these clear errors of law now before further damage is done. If the Court somehow determines that the order below is not immediately reviewable, it would render the appellate statute a dead letter.

Accordingly, the Altrad Defendants respectfully request that the Court rehear this case, including a suggestion that it rehear this matter in an *en banc* capacity, and reinstate this important appeal so that it can be considered on its merits.

ARGUMENT

I. South Carolina Code § 14-3-330(4) is squarely on point, yet neither the Receiver's motion to dismiss nor the order of dismissal account for this controlling statute.

In South Carolina, "[t]he right of appeal arises from, and is controlled by, statutory law. The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by section 14-3-330 of the South Carolina Code. An order generally must fall into one of several categories set forth in section 14-3-330 to be immediately appealable." Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina* 140 (3d ed. 2016).

"Interlocutory orders are interim or temporary orders. Although finality is a general requirement of appealability, there are certain interlocutory orders that are immediately appealable. Absent some specialized statute, the immediate appealability of an interlocutory order depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in section 14-3-330." *Id.* at 143.

The Receiver's motion to dismiss this appeal does not even mention the controlling statute. The order dismissing this appeal "overlooked" it as well. Rule 221(a), SCACR. But that statute controls the analysis, and it unquestionably authorizes this appeal.

The General Assembly has vested litigants with the right to appeal any order—including an "interlocutory order"—that does practically anything at all to a receivership appointment:

> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (4) ***An 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) (emphasis added).

This constant judicial oversight is imperative because of how dangerous an improper receivership appointment can be. *See generally Richland Cty. v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (warning that a receivership "is a drastic remedy, and should be granted only with reluctance and caution"); *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) ("The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.").

After all, a receiver exists strictly to take the property of another, a concept that is generally at odds with traditional notions of property ownership, representative democracy, and the Rule of Law recognized by Western cultures. That's why receivers are to be rarely appointed in the first place. *See Richland County*, 422 S.C. at 313, 811 S.E.2d at 769 ("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." (quoting *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887))) (cleaned up).

That's why the General Assembly prohibits receivers from being appointed without first giving notice to the entity whose property the receiver is tasked with taking, ***which never happened here***. S.C. Code Ann. §§ 15-65-20 to -30.

That's why the General Assembly prohibits receiverships before judgment unless a bond is also established so that the property supposedly in dispute can be secured without the "drastic remedy" of a receivership, ***which also never happened here***. *Id.* §§ 15-65-50 to -80; *see Truesdell v. Johnson*, 144 S.C. 188, 204, 142 S.E. 343, 348 (1928) (holding that an order appointing and continuing a receivership "is void" because it failed to contain the "mandatory" bond provision).

That's why the General Assembly (and the United States Constitution) prohibit receivers from reaching outside of South Carolina, which is a core component to this appeal. S.C. Code Ann. § 15-65-10(4); *see generally Pollock v. Carolina Interstate B. & L. Assn.*, 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.").

That's why the General Assembly holds parties who wrongfully "procure[] such receiver"—here, the *Park* Plaintiffs, who were responsible for the initial receivership appointment over Cape PLC, and the Receiver himself, as he alone convinced the circuit court to rewrite the Cape PLC appointment order to now appoint him as a receiver for Cape Intermediate Holdings Limited—financially responsible for all "costs," "charges," "expenses," and "actual damages" incurred by "any party" that has "opposed such receivership." S.C. Code Ann. § 15-65-90.

And that's why the General Assembly counts on the appellate courts to keep receiverships from exceeding their narrow boundaries, as a receiver operating unlawfully can wreak untold

havoc on an individual, a company, or an entire industry or marketplace if not constantly checked by the Judiciary.[1]

Accordingly, if the order below "granted," "continued," or "modified" the receivership appointment in any way, it is subject to immediate appellate review under Section 14-3-330(4)'s plain language and obvious legislative intent. Here, the order below did all three—the Receiver has never argued otherwise, nor did the dismissal order address this dispositive point in any way—making the order indisputably subject to an immediate appeal.

The words "granting," "continuing," and "modifying" are not abstract or obscure. They are common terms and have been given a consistent construction throughout South Carolina jurisprudence.

"Granting" means to approve of a request. *See, e.g.*, *N. River Ins. Co. v. Gibson*, 244 S.C. 393, 397, 137 S.E.2d 264, 266 (1964) ("To deny means to withhold, to refuse to grant." (quoting *Ballentine's Law Dictionary*, at 360)). In the context of receiverships, this Court has previously held that "granting" is synonymous with "appointing" a receiver. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479–80, 602 S.E.2d 83, 86–87 (Ct. App. 2004) (holding that an order appointing a custodian was not immediately appealable under Section 14-3-330(4) because a "custodian" and a "receiver" are not the same under the law, while indicating that an order "appointing" a receiver would be immediately appealable).

Here, in response to myriad arguments that the initial appointment order creating a receivership over Cape PLC was defective as a matter of constitutional, statutory, and procedural

[1] To be sure, some private parties have recently warned this Court precisely of these concerns. *See generally* Amicus Curiae Br. of Underwriters at Lloyd's, London at 20–27 (filed Apr. 26, 2024, in Appellate Case No. 2023-001461) (explaining that if left uncorrected by this Court, "the receivership order [involving an active Canadian company] will destabilize insurance markets, harm South Carolina insureds, and damage South Carolina's economy").

law, the Receiver argued that the receivership appointment should now include Cape Intermediate Holdings Limited. This was a stunning argument; in fact, the South Carolina Supreme Court has specifically rejected the Receiver's "misnomer" argument as a matter of law. *See Porter v. Brown*, 149 S.C. 151, 157–59, 146 S.E. 810, 812–13 (1929) (vacating a receivership appointment despite a "misnomer" argument identical to the Receiver's here). Nevertheless, the circuit court accepted that legally incorrect argument and granted the Receiver's request to grant a brand-new receivership appointment over Cape Intermediate Holdings Limited—even though that company had no notice of the appointment request and is not even a party to the *Tibbs* case in which it was granted. That "granting" of a new receivership appointment renders the order below immediately appealable as a matter of right.

"Continuing" means that something is proceeding forward or carrying on. *See, e.g.*, *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 348–49, 878 S.E.2d 896, 899 (2022) (describing the "blackletter definition" of the "continuing claim doctrine" as one where "a series of distinct events" is treated "as a single continuing event" for purposes of assessing a statute of limitations); *Townsend v. Singleton*, 257 S.C. 1, 10, 183 S.E.2d 893, 897 (1971) ("After such termination [of a lease], one continuing to occupy the premises, absent a new agreement, express or implied, comes squarely within the definition of a tenant at will.").

Here, the circuit court order permitted the Receiver to press on unabated with his appointment over the objections of the Altrad Defendants and others regarding the unconstitutional and unlawful nature of the appointment and the Receiver's subsequent conduct. Accordingly, the circuit court order "continued" the receivership appointment and is immediately appealable for a second, independent reason.

"Modifying" means that something has changed or altered. *See, e.g.*, *Jackson v. Sanford*, 398 S.C. 580, 587, 731 S.E.2d 722, 725–26 (2011) (rejecting a gubernatorial veto because it did not eliminate all funding for a particular item, but instead only changed the amount of funding available, rendering the veto "an improper modification of legislation"); *see also In re Joint Application of Duke Energy Carolinas*, Unpub. Op. No. 2016-UP-054, 2016 S.C. App. Unpub. LEXIS 65, at *8 (Ct. App. Feb. 10, 2016) ("'Modification' is defined as a 'small alteration, adjustment, or limitation.'" (quoting Webster's II New College Dictionary (1999 ed.))).

Here, the circuit court order fundamentally altered the Receiver's appointment from being over the Jersey-based Cape PLC to now include the UK-based Cape Intermediate Holdings Limited, a completely separate company that has nothing at all to do with South Carolina and that isn't even a party to these proceedings. That "modification" of the initial appointment renders the circuit court's order immediately appealable for a third, independent reason.

* * * * *

The conclusion that the order is immediately appealable as one that "grants," "continues," and "modifies" a receivership appointment is inescapable when tested against every norm of statutory interpretation, and there is no good-faith argument to the contrary. The Receiver has never even offered one. But most fundamentally, the order dismissing this appeal never engaged in this controlling analysis and appears to have overlooked South Carolina Code § 14-3-330(4).

What's more, identifying whether the order below "grants," "continues," or "modifies" a receivership appointment requires this Court to assess the effect of the circuit court's order. That analysis is required by South Carolina case law regarding the scope of appellate jurisdiction. *See, e.g.*, *Spalt*, 423 S.C. at 584, 816 S.E.2d at 583 ("The label given to the order is not determinative of its immediate appealability."); *Morrow*, 412 S.C. at 540, 773 S.E.2d at 147 (holding that

appellate courts must "evaluate the trial court's order as what it is—not merely what it appears to be" when finding that a "bifurcation" order was immediately appealable); *Cape Romain Contractors*, 405 S.C. at 121 n.4, 747 S.E.2d at 464 n.4 ("Focusing, as we must, on substance rather than nomenclature, because Appellants sought only the precise relief afforded under the FAA, we find the trial court's refusal to compel arbitration is immediately appealable [even though the order was styled as the denial of a motion to dismiss, exactly as here].").

But the dismissal order here did not contain any of the "effect of the order" analysis that is required by South Carolina law. Because the dismissal order appears to have overlooked this fundamental point, it should be reconsidered.

II. Dismissal renders South Carolina Code § 14-3-330(4) void and without effect.

Not only does the circuit court order fall squarely within the parameters of South Carolina Code § 14-3-330(4), it is precisely the type of interlocutory order that the Legislature had in mind when it vested the Court with appellate jurisdiction over the receivership process.

It is a bedrock principle of law and separation of powers that the Court has a duty to enforce statutes as they are written. As the Supreme Court has repeatedly explained: "The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." *Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

When discerning legislative intent, "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). Put differently, "[t]his Court will not construe a statute in a way which leads to an absurd result or ***renders it meaningless***." *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012) (emphasis added).

Here, the statute's history makes the General Assembly's intent unmistakable. When the Legislature reconstituted the South Carolina Supreme Court following passage of the 1895 Constitution, it gave the Supreme Court appellate jurisdiction in only three circumstances, none of which approximate current Section 14-3-330(4):

> Section 16. The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: In law cases.
>
> 1. Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the Court of Common Pleas and General Sessions, brought there by original process, or removed there from any inferior Court or jurisdiction, and final judgments in such actions: Provided, If no appeal be taken until final judgment is entered, the Court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.
>
> A. D. 1896.
>
> 2. An order affecting a substantial right made in an action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action, and when such order grants or refuses a new trial; or when such order strikes out an answer or any part thereof, or any pleading in any action; upon any appeal from an order granting a new trial on a case made, or on exceptions taken, if the Supreme Court shall determine that no error was committed in granting the new trial, it shall render judgment absolute upon the right of the appellant; and after the proceedings are remitted to the Court from which the appeal was taken, an assessment of damages, or other proceedings to render the judgment effectual, may be then and there had in cases where such subsequent proceedings are requisite.
>
> 3. A final order order affecting a substantial right made in any special proceeding, or upon a summary application in any action after judgment, and upon such appeal to review any intermediate order involving the merits and necessarily affecting the order appealed from.

1896 S.C. Acts No. 3, § 16.

The blind spot in the Supreme Court's appellate jurisdiction for certain interlocutory orders involving civil remedies of injunctions and receiverships became apparent. The Supreme Court rejected appeals in a series of cases based on the lack of appellate jurisdiction over such orders. *See, e.g.*, *Alston v. Limehouse*, 60 S.C. 559, 569, 39 S.E. 188, 191 (1901) ("Ordinarily, an order granting a temporary injunction is not appealable, and under the foregoing construction of said orders, we see no reason why this case should not fall within the general rule."); *S.C. & Ga. R.R. Co. v. E. Shore Terminal Co.*, 48 S.C. 315, 316, 26 S.E. 613, 613 (1897) (holding that an order denying a request for an injunction was not immediately appealable); *Garlington v. Copeland*, 25 S.C. 41, 43–44 (1886) (dismissing an appeal of an order continuing an injunction due to lack of appellate jurisdiction under the predecessor statute that contained the same limitations on appellate jurisdiction as did the 1896 statute).

But receiverships and injunction are "drastic" remedies that involve seizing private property or restricting private conduct without the benefit of a complete record. Even in that era, the Supreme Court recognized "the injury thereby caused [by the wrongful appointment of a receiver could] be far great than the injury sought to be averted." *Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898).

Because these procedural devices are ripe for potential irreversible abuse, the General Assembly patched this hole in the Court's appellate jurisdiction in 1901 and added a new category of immediately-reviewable orders. It gave the Supreme Court jurisdiction to review "[a]n interlocutory order or decree in the Court of Common Pleas, granting or continuing or modifying or refusing an injunction, or else granting or continuing or modifying or refusing the appointment of a Receiver hereafter granted in any action," and it accompanied this authority with other procedural points to govern such appeals. 1901 S.C. Acts No. 358.

The Supreme Court exercised this new appellate jurisdiction almost immediately. *See, e.g.*, *Holladay v. Hodge*, 84 S.C. 109, 111, 65 S.E. 1019, 1020 (1909) (reviewing on direct appeal an order granting the appointment of a receiver); *Williams v. Jones*, 62 S.C. 472, 481, 40 S.E. 881, 884 (1902) (vacating a temporary injunction and acknowledging that the order was appealable under "the act of 1901"). And when, as here, an order fell within the scope of new Section (4)'s broad terms, the Supreme Court recognized it had a "clear[] duty . . . to pass upon the questions raised." *See Lyles v. Williams*, 96 S.C. 290, 293, 80 S.E. 470, 471 (1913) (declining to dismiss an appeal of an interlocutory order refusing a receivership).

This aspect of the Supreme Court's (and, once created, this Court's) appellate jurisdiction remained unchanged until 1991, when the General Assembly amended Section (4) to its current form and deleted the procedures shortening the appellate timeline for interlocutory orders involving injunctions and receiverships that were included with the 1901 law. *See* 1991 S.C. Acts No. 115, § 2 ("Section 14-3-330(4) of the 1976 Code is amended to read: '(4) An 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.'").

Nothing in the statute's plain language or its legislative history provides any reason for the Court to now construe the scope of Section (4) narrowly. The statute's history makes clear that the General Assembly intended for the Court to provide ongoing oversight to cases involving injunctions and receiverships—two "drastic" civil remedies, and the Supreme Court recognized that it has a "duty" to address such appeals almost immediately after the Legislature expanded appellate jurisdiction over such orders. *Lyles*, 96 S.C. at 293, 80 S.E. at 470.

To date, neither this Court nor the Supreme Court have construed Section (4) with respect to the myriad receiverships that have come from the Asbestos Docket. The *Childers* order makes

no mention of this controlling statute at all. Respectfully, the Court has a "duty" to consider this appeal, which is unquestionably within the plain language of South Carolina Code § 14-3-330(4)'s broad scope for immediate review of interlocutory orders involving receiverships. Any other construction—including dismissing this appeal without any analysis or acknowledgment of this controlling statute—voids Section 14-3-330(4) without explanation and does considerable damage to the separation-of-powers and Rule-of-Law principles that are embodied by the Judiciary's faithful enforcement of statutes that the Legislature passes.

CONCLUSION

If not now, it is unclear when the circuit court's order, which is patently unconstitutional and which enables an unlawful receivership, can ever be reviewed on appeal. But one thing is clear: the General Assembly has vested the Altrad Defendants (and all other third-party defendants to this matter) with the right to appeal that order immediately, to have it vacated immediately, and to be relieved of the endless burdens of dealing with this receivership immediately.

Because South Carolina Code § 14-3-330(4) specifically creates immediate appellate jurisdiction to review the circuit court's rulings below, the Altrad Defendants respectfully request that the Court reconsider the dismissal order and reinstate this appeal.

SUGGESTION FOR EN BANC REVIEW

As the Court is no doubt aware, the circuit court has appointed the same receiver at the request of the same counsel two dozen times, and rarely with a hearing. It is long settled in South Carolina that receiverships should seldom be invoked and only approved with extreme caution because they are so antithetical to norms of private property rights. As the Supreme Court warns: "While the court of equity, in proper cases, has the power to place a debtor's property in the hands of a receiver, this power should be exercised with great caution, ***lest the injury thereby caused be***

far greater than the injury sought to be averted." *Miller*, 53 S.C. at 367, 31 S.E. at 282 (emphasis added).

Here, there is no "debtor." The *Park* plaintiffs who got this Receiver appointed have no judgment or even a claim against the company in receivership, and the second company over which the Receiver himself sought an appointment has no claims pending against it, either. This litigation truly defies every applicable norm of United States constitutional law, South Carolina statutory law, myriad controlling cases from the South Carolina Supreme Court, and all manner of procedural rules and norms. The circuit court's order should be reversed at once, as South Carolina Code § 14-3-330(4) specifically gives the Altrad Defendants (and every other third-party defendant) a right to have it reviewed immediately.

Because the dismissal order ignores both this statute and the well-established standards for assessing appellate jurisdiction, the Altrad Defendants respectfully suggest that the Court rehear this matter in an *en banc* capacity pursuant to Rule 219(b), SCACR; reinstate the appeal; and vacate the rulings below.[2]

Signature Page Attached

[2] The Altrad Defendants specifically adopt and incorporate by reference all of their prior appellate filings, including their argument that this Court should consider the myriad personal jurisdiction issues and arguments presented in this appeal. The Altrad Defendants also specifically adopt and join in all appellate filings and arguments by their co-third-party appellants in this and all related matters before the Court, including, but not limited to, the Charter Defendants' arguments in Appellate Case Nos. 2023-002009 through 2023-002011 that this appeal is also proper under South Carolina Code § 14-3-330(2) as violating a substantial right.

Respectfully submitted,

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May 24, 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:

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