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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. 2024-000524

John A. Tibbs and Margaret B. Tibbs……**PLAINTIFFS**,

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**,

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 SAS, ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC, Charter Consolidated Ltd., ESAB Corporate, and Central Mining & Investment Corporation Ltd. are the ……..…….…..**APPELLANTS**.

APPELLANTS ARRANCO US, LLC; HAWK BIDCO (US) INC.; AND SPARROWS OFFSHORE, LLC'S PETITION FOR REHEARING (INJUNCTION APPEAL)

On March 19, 2024, Third-Party Defendants ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC (hereinafter "Sparrows Appellants") filed a Notice of Appeal of the circuit court's March 12, 2024 Order refusing and denying a request for injunction to enforce Rule 205 of the South Carolina Appellate Court Rules. Thereafter, on April 17, 2024—on Motion by Respondents—this Court dismissed, outright, the March 19 appeal of the circuit court's order.

This Court's order stated "the order on appeal should be characterized as an order granting the receiver's motions to compel discovery."

As contemplated by Rule 221(a) of the South Carolina Appellate Court Rules, this Court either overlooked or misapprehended the basic reason the March 19 Order is appealable, especially in light of *this Court's* prior instruction in another matter that appeal of the actual order violating Rule 205, SCACR, is required to put the issue before the Court. The circuit court's failure to follow the bounds of Rule 205, SCACR, by refusing to address—and thereby refusing or denying—the motion for injunction must be remedied. Accordingly, and for the reasons set forth below, this Court should grant a rehearing of this matter.

ARGUMENT

I. The March 12 Order is appealable.

a. The circuit court's order is appealable on its face.

There is no doubt the March 12 Order granted a Motion to Compel. However, stated most simply, the point this Court overlooked or misapprehended in that regard is, in refusing a motion for injunctive relief, filed pursuant to Rule 205, SCACR, the circuit court refused to follow an appellate court rule which has no applicable exception *or* a mechanism affording a circuit court discretion in its enforcement.

"Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within § 14–3–330." *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005). In turn, subsection 14-3-330(4) states: "The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . . 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."

The General Assembly chose to use the word "refusing." "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id*. In other contexts, the General Assembly has indicated "refuse" and "deny" are two separate things. *See, e.g.*, S.C. Code Ann. § 15-78-60(12) (listing "revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit . . . ").[1] Thus, the statute must mean *refuse* specifically, which is different from outright denial. *Helton v. Clements*, 787 F.2d 1016, 1017 (5th Cir. 1986) (differentiating between refusal and denial, while noting similarities in the effect); *Wooten v. Roach*, 964 F.3d 395, 405 (5th Cir. 2020) (same). Common sense alone dictates that refusal is a total lack of action when compared with denial, which would indicate a decision against a motion.

Accordingly, subsection § 14-3-330(4) vests the Sparrows Appellants with the right to immediately appeal an order that "refus[es]" their request for an injunction. That occurred here.[2] The Court's order dismissing this appeal completely fails to acknowledge that "the effect of an interlocutory order" is what "determine[s] its appealability." *Thornton v. S.C. Elec. & Gas Corp.*,

[1] Dozens of statutes reflect a similar choice to use the word "refuse" or "deny" in different contexts—indicating further, that this was a conscious choice with meaning that must be effectuated. *See, e.g.*, S.C. Code Ann. § 2-19-60 (using the word refusal); S.C. Code Ann. § 30-4-110(3)(F) (same); S.C. Code Ann. § 7-17-300 (using the word deny).

[2] And, by refusing the injunction after being alerted to the resulting impact of not ruling, the actual refusal further amounted to an outright denial of the injunction sought, even though a formal "denial" is not the applicable standard for appealability under S.C. Code Ann. § 14-3-330(4).

391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). Its ruling runs directly contrary to the myriad cases discussed below, and by explicitly acknowledging the circuit court's order allows the Receiver to proceed with "discovery" even though the propriety of the receivership itself is on appeal, the Court's dismissal order actually confirms exactly why the circuit court's ruling that refused to enjoin the Receiver from all activity is immediately appealable under South Carolina Code § 14-3-330(4). *See Porter v. Brown*, 149 S.C. 151, 152–59, 146 S.E. 810, 810–13 (1929) (reviewing on immediate appeal and reversing a trial court's denial of a motion to terminate an unlawful receivership because, precisely as here, the receiver was wrongly appointed over a company that had been misdescribed in the request for a receivership). Indeed, the circuit court's decision—contained within a footnote and stating it would keep the motions "under advisement"—is a textbook *refusal,* as contemplated within the appealability statute, and renders this order immediately appealable. Yet, this Court's Order granting Respondent's Motion to Dismiss this appeal makes no mention of that fact.

As set forth in section II of this Petition, it is clear that under the facts of this case, Rule 205's self-executing mechanism applies and this Court's denial of Sparrows Appellants' request for relief should be reconsidered. Without this Court allowing this appeal and remedying the issues under Rule 205, there is no mechanism for review of a circuit court order refusing to enter an injunction which was sought solely to enforce the court rules of this State. *Strom v. Am. Freehold Land Mortg. Co. of London*, 42 S.C. 97, 20 S.E. 16, 17 (1894) ("On the contrary, it is not difficult to conceive of cases in which the remedy by injunction is *absolutely essential* to the assertion and preservation of the legal rights of a party, and, in such a case, to *deny the right of appeal would be to deny a legal right secured to the citizen by the constitution and laws of this commonwealth*." (emphases added)); *Seabrook v. Mostowitz,* 51 S.C. 433, 29 S.E. 202, 203 (1898) ("In *Strom v.*

Mortgage Co., 42 S. C. 101, 20 S. E. 16, this court held that an order dissolving a temporary injunction is appealable when the injunction is essential to the assertion and preservation of a legal right.").

b. The Appeal was brought per this Court's instructions.

Recently, this Court made clear that parties with pending appeals are not to file "motions to clarify" to seek enforcement of Rule 205, SCACR, and that the Court will not take "action on any order which is not properly before it." *See* Order in Appellate Case No. 2023-000727 (filed Nov. 21, 2023).[3] In that case, the motion to clarify was filed in an appellate case open on the appeal of a different order. The Sparrows Appellants, rather than seeking clarification by interlocutory motion, contemporaneously filed a proper Notice of Appeal and their Initial Brief seeking enforcement of Rule 205, and in the interim, sought an injunction to preserve their rights. The only other option was to file a similar motion to clarify, which would have been directly contrary to this Court's above instruction.

The circuit court's March 12 Order—constituting action taken in violation of the precepts and limitations of Rule 205—was placed properly before this Court for enforcement. *See, e.g.*, *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional."). For the November 21 Order referenced above to provide its stated avenue for relief, it must have contemplated exactly this manner of appeal.

[3] The circuit court referenced both the November 21 Order in Appellate Case No. 2023-000727 as well as the September 8 Order in the same case. Neither point addresses head-on the issue as to Rule 205. One discusses only a stay, which, as discussed below, has no bearing on the question posed by a Rule 205 jurisdiction analysis. The other, as noted above, never reached the Rule 205 question because of the manner in which it was placed before the Court.

And, as set forth herein, the Rule 205 issues are legitimate, and the circuit court's refusal to enjoin all action as a result is immediately appealable.

c. Other authority supports immediate appealability.

Even if the above reasoning was to somehow be unavailing, this appeal is not dissimilar from either *Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 124, 857 S.E.2d 4, 6 (2021), or *Williams v. Northwestern Sec. Life Ins. Co.*, 307 S.C. 462, 464–65, 415 S.E.2d 809, 810 (1992), where otherwise-unappealable denials of Rule 12(b) motions were immediately appealable because, as here, they denied injunctions that the defendants sought as a *matter of law*, rather than as discretionary injunctions under the traditional multi-part test. *See also Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 842–43 (Ct. App. 1999) (otherwise-unappealable denial of a motion without prejudice immediately appealable because the effect of the circuit court's ruling was to "favor[] litigation over arbitration," which is immediately appealable); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539–40, 773 S.E.2d 144, 146–47 (2015) (finding otherwise-unappealable "bifurcation order" to be immediately appealable because it deprived the plaintiffs of their right to "bring[] their case against the defendant of their own choosing").

This issue is no different from federal cases that have held that orders that do not rule on injunction requests are tantamount to "refusals" to issue injunctive relief, thereby rendering an order immediately appealable under 28 U.S.C. § 1292(a)(1), which uses the identical language of South Carolina Code § 14-3-330(4) with respect to immediate review of injunction rulings. *See, e.g., In re Fort Worth Chamber of Commerce*, No. 24-10266, --- F.4d ----, 2024 U.S. App. LEXIS 8336, at *7 (5th Cir. Apr. 5, 2024) (recognizing that "if a district court does not timely rule on a preliminary-injunction motion, it can effectively deny the motion" and render its decision

immediately appealable); *see also Gray Line Motor Tours, Inc. v. New Orleans*, 498 F.2d 293, 296 (5th Cir. 1974) ("If, for example, an action has the effect of denying the requested relief without actually making a formal ruling, then the refusal of the district court to issue a specific order will be treated as equivalent to the denial of a preliminary injunction and will be appealable."); *see also Helton*, 787 F.2d at 1017 (explaining why refusal to rule can be akin to denial); *D.C. v. Trump*, 959 F.3d 126, 130 (4th Cir. 2020) (same).

II. Rule 205 must be enforced by this Court.

a. Applicable Law

The impropriety of the Receiver's appointment is currently pending for appellate review. *See* Appellate Case No. 2023-002007. During the pendency of that appeal, Rule 205 completely strips jurisdiction from trial courts over any matter that is affected by the appeal—including the Receiver's very authority to operate. That Rule provides, *in its entirety*:

> Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

The rule is clear on its face. *Any issue* involved with an appeal is within the "exclusive jurisdiction" of the appellate court, which necessarily renders all such issues beyond the reach of the circuit court. *See Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Gattis v. Murrells Inlet VFW No. 10420*, 353 S.C. 100, 112, 576 S.E.2d 191, 197 (Ct. App. 2003) ("Circuit courts generally lose subject matter jurisdiction of a case when a notice of appeal is filed and served."); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) ("Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter."); Jean H. Toal, *et*

al., Appellate Practice in South Carolina 121 (3d ed. 2016) (confirming that "[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal").

A jurisdictional prohibition renders the circuit court completely without power to act. *See, e.g., Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) ("Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." (quoting 32A Am. Jur. 2d *Federal Courts* § 581 (2007))). South Carolina courts have enforced Rule 205 when a circuit court does anything that touches on an issue that is already pending on appeal. The South Carolina Supreme Court has repeatedly instructed circuit courts to stand down when a matter is on appeal. *See, e.g., Lancaster v. Ga.-Pac. Corp.*, 403 S.C. 136, 137–38, 742 S.E.2d 867, 868 (2013) ("Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court. . . . [W]e hereby remind the bench and bar that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court."); *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) ("We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal.").

Time after time, when circuit courts ignore that instruction, both the Supreme Court and this Court have deemed circuit court orders void *ab initio*. *See, e.g., Arnal v. Fraser*, 371 S.C. 512, 517–23, 641 S.E.2d 419, 421–24 (2007) (conducting matter-by-matter analysis of lower court rulings; voiding *ab initio*, "for lack of jurisdiction," those rulings that were affected by the matter on appeal; and noting that, per Rule 205, "the lower court may not act or issue orders that affect

an issue on appeal"); *Wingate v. Wingate*, 289 S.C. 574, 575, 347 S.E.2d 878, 878 (1985) (holding that a family court's order reducing alimony payments "is void" because "alimony was an issue on appeal from the divorce decree" and "this Court had exclusive jurisdiction over the alimony issue"); *Wilson v. Walker*, 340 S.C. 531, 540, 532 S.E.2d 19, 23 (Ct. App. 2000) (vacating a contempt order "for lack of jurisdiction" because the trial court issued it while an earlier order on which the contempt order was based was on appeal).

b. Analysis

As set forth in the Initial Briefs filed by Sparrows Appellants on February 22, 2024 (in Appellate Case No. 2023-002007) and March 19, 2024 (in the instant Appellate Case), the circuit court has unlawfully appointed a receiver over an active, foreign company that had no notice of the potential receivership and in no way is subject to the jurisdiction of a South Carolina state court.

Cape Intermediate Holdings Limited ("CIHL") is a going concern in the United Kingdom with no connection to South Carolina: it has no property in South Carolina, has no creditors in South Carolina, is not subject to any judgment in South Carolina, and is not even a party to the *Tibbs* case from which this third-party action arises. All aspects of the appointment violate the United States Constitution, South Carolina law, or both, as explained in the Sparrows Appellants' Initial Brief in the appeal regarding the appointment order. *See* C-Track entry dated February 22, 2024 in Appellate Case No. 2023-002007.[4] Because this Court is currently considering an appeal involving, among other issues: (1) whether the Receiver was unlawfully appointed as a matter of

[4] The Sparrows Appellants incorporate fully herein its Initial Briefs filed February 22, 2024 and March 19, 2024, including the recitation of uncontroverted facts and related procedural history as applicable to this section.

both federal and South Carolina law (either as a receivership over Jersey-based Cape PLC, as initially appointed in another case, or as a new receivership granted in this case over U.K.-based CIHL); (2) if the appointment was somehow valid, the scope of the Receiver's authority; and (3) whether the circuit court has personal jurisdiction over the Sparrows Appellants at all, *every issue* related to the receivership appointment is presently within this Court's "exclusive jurisdiction" pursuant to Rule 205 and beyond the reach of the circuit court's jurisdiction.

When a circuit court lacks jurisdiction to proceed, so does the Receiver. The Receiver is "the officer of the Court" or "the arm of the Court," *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923), and where the absence of jurisdiction renders the circuit court without power to act, it does the same to its Receiver. *See Limehouse*, 404 S.C. at 104, 744 S.E.2d at 572 (holding that "[w]ithout jurisdiction, a court cannot proceed at all in any cause"). Thus, where the circuit court unambiguously lacks jurisdiction and authority to proceed as a result of Rule 205, the Receiver himself also lacks authority to conduct any activity, as he cannot possibly have any greater power to function than does the circuit court that appointed him. *See Pollock v. Carolina Interstate Bldg. & Loan Ass'n*, 48 S.C. 65, 75, 25 S.E. 977, 980 (1896) ("Having the right to appoint a receiver in their territory alone, such appointee is a creature of the appointing power, and cannot have greater power than his creator. The stream cannot rise higher than its source.").

This longstanding, and uncontroverted authority is binding and mandatory. Rule 205 applies to divest lower courts of authority as set forth by its plain text, and the failure to respect that rule must be corrected.

c. *Stokes-Craven* represents an example of enforcement of Rule 205

The Supreme Court made crystal clear that Rule 205's scope is broad and a circuit court retains *no* jurisdiction over anything affected in any way by an issue on appeal.

In *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016), the Supreme Court was asked to reverse its prior ruling in *Epstein v. Brown*, 363 S.C. 372, 382–83, 610 S.E.2d 816, 821 (2005). In *Epstein*, a 3–2 court held the statute of limitations for a legal malpractice claim begins at the moment a client knows or should know she has a claim against her counsel, regardless of the pendency of an appeal. Thereafter in *Stokes-Craven*, the Supreme Court initially reversed *Epstein*, based on its view of a 1994 opinion from the Oklahoma Court of Appeals. *Stokes-Craven Holding Corp. v. Robinson*, 2015 S.C. LEXIS 328, at *21–25 (S.C. Sup. Ct. Sept. 9, 2015) (3-2 opinion with then-Chief Justice Toal and Justice Kittredge finding that *Epstein* was more consistent with South Carolina's discovery rule for potential tort claims) *withdrawn and substitute opinion issued at* 416 S.C. 517, 787 S.E.2d 485 (2016). The Supreme Court then reconsidered its initial opinion and issued a new opinion—staying with its overruling of *Epstein*. But, the Court removed any reliance on out-of-jurisdiction case law and instead held its ruling was "strictly based on existing appellate court rules." The specific rule: *Rule 205, SCACR*. 416 S.C. at 532, 787 S.E.2d at 493.

The new *Stokes-Craven* majority—which now included then-Acting Justice Toal and Justice Kittredge—held the statute of limitations for a malpractice claim *could not* run during the pendency of an appeal as a matter of law because Rule 205 deprived the circuit court of jurisdiction to consider anything that may in any way touch on the appeal:

> Furthermore, Rule 205 divests the lower court or administrative tribunal of jurisdiction over "***matters affected by the appeal***," which necessarily would include a legal malpractice cause of action that is based on the outcome of the appealed verdict, judgment, or ruling. *See Tillman v.*

> *Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter affected by the appeal' under Rules 205 and 241(a)."); *Black's Law Dictionary* 68 (10th ed. 2014) (defining "affect" as "to produce an effect on; to influence in some way").
>
> Consequently, until the appeal is resolved against the client, there is no legally cognizable cause of action for an attorney's alleged malpractice. Upon resolution of the appeal, a cause of action for legal malpractice accrues triggering the statute of limitations.

Id. at 534, 787 S.E.2d at 494 (emphasis supplied by the Supreme Court).

To remove any doubt about the breadth of Rule 205's reach, Chief Justice Pleicones observed that the *Stokes-Craven* majority broadly applied Rule 205 to eliminate the circuit court's jurisdiction to consider even "inchoate and speculative collateral lawsuits" during an appeal that raises similar or related issues. *Id.* at 538, 787 S.E.2d at 496 (Pleicones, C.J., concurring in judgment).

This authority is mandatory and binding and must be applied by this Court. *Duncan v. Rec. Pub. Co.*, 145 S.C. 196, 143 S.E. 31, 69 (1927).

CONCLUSION

Rule 205 is self-executing and applies automatically. The absence of jurisdiction renders the circuit court without power to act. To enforce that, pursuant to this Court's orders, the Sparrows Appellants requested the lower court enjoin further action to comport with Rule 205. By authorizing the Receiver to continue his activities—including "discovery," as the Court acknowledged in its Order dismissing this appeal—the circuit court necessarily refused to enter the injunction sought by the Sparrows Appellants, rendering that order immediately appealable as a matter of right. *See* S.C. Code Ann. § 14-3-330(4) (authorizing appeals of any order "granting, continuing, modifying, or refusing an injunction"). This Court's dismissal of this appeal is

irreconcilable with both subsection § 14-3-330(4) and the cases catalogued above that control this appealability inquiry.

Neither the South Carolina Code nor these controlling authorities are anywhere addressed in the dismissal order, suggesting that the Court may have overlooked them. Accordingly, the Sparrows Appellants respectfully request that the Court grant this Petition, reinstate this appeal, and rule on the critical issues presented in this appeal.[5]

Respectfully submitted,

/s Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, South Carolina 29201
Tel.: (803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com
cganjehsani@richardsonplowden.com
asanzgiri@richardsonplowden.com
ATTORNEYS FOR APPELLANTS ARRANCO US, LLC, HAWK BIDCO (US) INC., AND SPARROWS OFFSHORE, LLC

Date: May 2, 2024

[5] Per Rules 208(b)(6) and 240, SCACR, the Sparrows Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated co-appellants.

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 **PETITION FOR REHEARING (INJUNCTION APPEAL)**, dated May 2, 2024, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

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

A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

M. Todd Carroll (todd.carroll@wbd-us.com)
Kevin A. Hall (kevin.hall@wbd-us.com)
M. Elizabeth O'Neill (elizabeth.oneill@wbd-us.com)

Counsel for Co-Appellants Mohed Altrad and Altrad Investment Authority SAS

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

/s Ashwin R. Sanzgiri
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

ATTORNEY FOR APPELLANTS ARRANCO US, LLC, HAWK BIDCO (US) INC., AND SPARROWS OFFSHORE, LLC

Date: May 2, 2024

From:	Ashwin Sanzgiri
To:	Theile McVey; jkassel@kassellaw.com; kpaul@dobslegal.com; jrutkoski@kassellaw.com; tbranham@dobslegal.com; achapman@dobslegal.com; dhumen@dobslegal.com; khardin@dobslegal.com; tbarnes@dobslegal.com; pdp@rplegalgroup.com; jchandler@rplegalgroup.com; Brian Barnwell; Hall, Kevin; O"Neill, Elizabeth; James Elliott; Cameron Berthelsen; vrawl@grsm.com; jon@smithrobinsonlaw.com; murrell@smithrobinsonlaw.com; ljoyner@gwblawfirm.com; jlay@gwblawfirm.com; gculbreath@gwblawfirm.com; ljordan@gwblawfirm.com; Eleanor Jones; Brown, Stephen L.; Hines, Russell; Gandy, III, James D. (Tripp); Olive, IV, Graydon; Justman, Aimee; troy.brown@morganlewis.com; dana.becker@morganlewis.com; brady.edwards@morganlewis.com; robert.jacques@morganlewis.com; paul.scrudato@morganlewis.com; shanonp@smithrobinsonlaw.com; Yingling, Donna; Helen Elliott
Cc:	Steve Pugh; Ben Carlton; Carmen Ganjehsani; Charity McQueen
Subject:	John Tibbs v. Asbestos Corporation Limited (Appellate Case No. 2024-000524)
Date:	Thursday, May 2, 2024 4:38:59 PM
Attachments:	Petition for Rehearing - Sparrows Appellants (3356122).pdf

Good afternoon,

Please find served upon you the Petition for Rehearing on behalf of Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC in the above-referenced case which we will be filing with the Court of Appeals of South Carolina later today.

Please let me know if you have any questions.

Thank you,

Ashwin

HOME VCARD LOCATION

RICHARDSON PLOWDEN ATTORNEYS AT LAW

Ashwin R. Sanzgiri
Attorney
ASanzgiri@RichardsonPlowden.com

Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
Tel: 803.576.3732
Fax: 803.779.0016
www.RichardsonPlowden.com